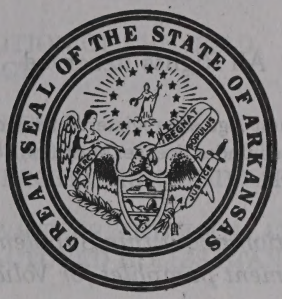
# ARKANSAS CODE OF 1987 ANNOTATED




## 2021 SUPPLEMENT VOLUME 20B

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*Prepared by the Editorial Staff of the Publisher*

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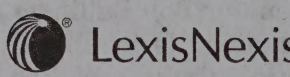


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# TITLE 20

# PUBLIC HEALTH AND WELFARE

## (CHAPTERS 1-16 IN VOLUME 20A; CHAPTERS 56-86 IN VOLUME 20C)

*SUBTITLE 2. HEALTH AND SAFETY (CONT'D)*

CHAPTER.



*SUBTITLE 3. MENTAL HEALTH*

CHAPTER.



## *SUBTITLE 2. HEALTH AND SAFETY (CONT'D)*

## CHAPTER 17

## DEATH AND DISPOSITION OF THE DEAD

SUBCHAPTER.

## Subchapter 1 — General Provisions



### 20-17-101. Death — Legal definition.

#### RESEARCH REFERENCES

**ALR.** Uniform Determination of Death Act. 49 A.L.R.7th Art. 5 (2020).

### 20-17-102. Arkansas Final Disposition Rights Act of 2009 — Definitions.

#### CASE NOTES

**Disinterment.**

Circuit court erred in denying parents' petition for exhumation because the parents, as their daughter's next of kin, were not prevented from disinterring her and burying her in the family plot as the plain wording of this section and the regulations pertaining to disinterment allowed the next of kin to make that decision; the parents were in complete agreement, and the daughter's mother-in-law had no say in her disinterment (the mother-in-law did not argue on appeal that she had the right to control the disposition of her son's cremains, which were buried in the casket with the daughter's body). Welch v. Faulkner, 2019 Ark. App. 207, 575 S.W.3d 448 (2019).

Daughter's stepson had no say in her disinterment because he was not her child, and he had not yet attained majority, which was a requirement of this section. Welch v. Faulkner, 2019 Ark. App. 207, 575 S.W.3d 448 (2019).

### 20-17-107. Preservation of dead bodies.

(a) A dead body is not required to be embalmed.

(b) A dead body that is not buried within forty-eight (48) hours after death shall either be embalmed or refrigerated.

(c) Embalming or refrigeration is not required when a dead body is to be cremated within forty-eight (48) hours after death.

**History.** Acts 2021, No. 132, § 1.

## Subchapter 5 — Anatomical Gifts Generally



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-17-502. Organ Donor Awareness Education Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Organ Donor Awareness Education Trust Fund".

(b) The fund shall consist of all moneys donated or collected for the purpose of educating or informing the public of the need for organ donations, all interest earned from the investment of fund balances, and any remaining fund balances carried forward from year to year.

(c) The Secretary of the Department of Finance and Administration may accept any gifts, grants, bequests, devises, and donations made to the State of Arkansas for the purposes of organ donor awareness education. Moneys received for the purposes stated in this section shall be deposited into the fund.

(d) The Department of Finance and Administration shall administer the fund.

(e) The secretary shall grant funds available and appropriated from the fund to the Arkansas Regional Organ Recovery Agency, Inc. or its successor agency to be used for educational or informational materials and other related costs associated with informing or educating the public about organ donations and organ donation awareness.

(f) The Arkansas Regional Organ Recovery Agency, Inc. or its successor agency shall annually provide to the Chief Fiscal Officer of the State documentation evidencing that granted funds have been used in accordance with the purposes of this act.

**History.** Acts 2003, No. 1362, § 1; 2019, No. 910, §§ 3482, 3483.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (c); and substituted "secretary" for "director" in (e).

## Subchapter 7 — Unclaimed Bodies



### 20-17-701. Definitions — Rights of coroner or courts unaffected.

(a) As used in this subchapter:

(1) "Medical school" means a medical school or school of osteopathic medicine in this state that is:

(A) Accredited by an accrediting agency recognized by the United States Department of Education; or

(B) Approved by the Arkansas Higher Education Coordinating Board to seek accreditation by an accrediting agency recognized by the United States Department of Education;

(2) "Next of kin" means a spouse, parent, child, sibling, or person otherwise authorized under § 20-17-702;

(3) "Unclaimed body" means a human body for which the next of kin:

(A) Cannot be located; or

(B) Does not exercise his or her right of disposition within the earlier of:

(i) Two (2) days of notification of the death of the deceased; or

(ii) Five (5) days of the death of the deceased; and

(4) "Unclaimed remains" means the cremated remains of an unclaimed body.

(b) This subchapter does not affect the right of a coroner to hold the dead body as described under § 20-17-703 for the purpose of investigating the cause of death or affect the right of any court of competent jurisdiction to enter an order affecting the disposition of the body.

**History.** Acts 1959, No. 22, § 13; A.S.A. 1947, § 82-405.10; Acts 2017, No. 147, § 4; 2019, No. 954, § 1.

**Amendments.** The 2019 amendment rewrote (a)(1); added (a)(2) through (a)(4); and rewrote (b).

## 20-17-702. Search for next of kin.

(a)(1)(A) The person who assumes original and lawful possession, charge, or control of any body as described in this subchapter shall conduct a diligent search for relatives or next of kin of the deceased, or that person shall request the county sheriff or such other person as may be required by law to conduct the search.

(B) The search shall be completed within five (5) days of the death of the deceased or the date of the request, whichever is later.

(2) The person conducting the search under subdivision (a)(1) of this section shall make every effort to find the spouse, if any, of the deceased.

(3) If the person conducting the search is not satisfied that the putative spouse is, in fact, a legal spouse, or it is determined that no spouse exists, then every effort shall be made to find the parents and siblings, if any, of the deceased.

(b) If the identity of the deceased is not known, the investigation shall include without limitation submittal of the unidentified deceased to the State Crime Laboratory for forensic examination and scientific identification that may include fingerprinting, dental examination, DNA analysis, and entry into the National Missing and Unidentified Persons System database.

(c) If the deceased is eighteen (18) years of age or older, the person conducting the search shall conduct a diligent search with the Department of Veterans Affairs and the United States Department of Veterans

Affairs to determine whether the deceased was a veteran under § 20-17-1403.

(d) If a relative or next of kin does not claim the body, a friend, a representative of a fraternal society of which the deceased was a member, a veterans service organization as defined in the Missing in America Project Act, § 20-17-1401 et seq., the Department of Veterans Affairs, the United States Department of Veterans Affairs, or a representative of a charitable or religious group may claim the body for burial or cremation at his or her expense as described in § 20-17-706(a)-(c).

(e)(1) If a party listed in subsection (d) of this section or a medical school does not claim the body, the person in possession, charge, or control of the unclaimed body shall bury, cremate, or donate the unclaimed body within ten (10) days after the date of death.

(2) If the unclaimed body is cremated and a relative, next of kin, or other party described in subsection (d) of this section does not claim the unclaimed remains within five (5) days of cremation, the person in possession, charge, or control of the unclaimed body may dispose of the unclaimed remains in a manner permitted by law.

(3) If money is discovered on the unclaimed body, the person in possession, charge, or control of the unclaimed body may use the money toward the disposition of the unclaimed body.

(4) If the deceased had an estate, the estate is responsible for reimbursing the person in possession, charge, or control of the unclaimed body for all reasonable expenses incurred in relation to the disposition of the unclaimed body.

(5)(A) The coroner in the county where the unclaimed body is located may assume possession, charge, or control of the unclaimed body and all obligations and benefits required of the person in possession, charge, or control of the unclaimed body.

(B)(i) The person in possession, charge, or control of the unclaimed body may petition the county court where the unclaimed body is located for the county to take possession, charge, or control of the unclaimed body.

(ii) The county court shall grant the county possession, charge, or control of the unclaimed body upon a finding that the county is able to address the disposition of the unclaimed body and the county is the proper county for disposition of the unclaimed body.

**History.** Acts 1959, No. 22, § 5; A.S.A. 1947, § 82-405.3; Acts 1997, No. 404, § 1; 2017, No. 147, § 4; 2019, No. 954, § 1.

**Amendments.** The 2019 amendment added the (a)(1)(A) designation; added (a)(1)(B); substituted "include without limitation submittal of the unidentified deceased to the State Crime Laboratory for forensic examination and scientific identification that may include fingerprinting, dental examination, DNA analysis, and entry into the National Missing and Unidentified Persons System database" for "include, but not be limited to, the taking of fingerprints and sending the fingerprint records to the Federal Bureau of Investigation in Washington, D.C., for identification and filing" in (b); and added (c) through (e).

## 20-17-703. Notice to medical schools — Definition.

(a) Any person in charge of a prison, morgue, hospital, funeral parlor, or mortuary, any person who is a public officer, agent, or employee of the state, any county or municipality, and all persons coming into possession, charge, or control of any human body that is unclaimed for burial may notify a medical school that the body, if unclaimed, is available for use in the advancement or study of medical science.

(b) For the purpose of notifying a medical school of its availability, "unclaimed body" means a human body in the possession, charge, or control of the persons named in subsection (a) of this section for a period not to exceed forty-eight (48) hours, during which time a relative, next of kin, friend, representative of a fraternal society of which the deceased was a member, veterans service organization as defined in the Missing in America Project Act, § 20-17-1401 et seq., the Department of Veterans Affairs, the United States Department of Veterans Affairs, or a representative of a charitable or religious group may claim the body for burial purposes.

**History.** Acts 1959, No. 22, § 1; A.S.A. 1947, § 82-404; Acts 2013, No. 723, § 3; 2017, No. 147, § 4; 2019, No. 954, § 2.

**Amendments.** The 2019 amendment substituted "that is unclaimed for burial may" for "which is unclaimed for burial shall" in (a).

## 20-17-704. Delivery to medical school.

Upon expiration of the forty-eight (48) hours as provided in § 20-17-703, if the body of a deceased person has not been claimed for burial, the person then having possession, charge, or control of the unclaimed body shall surrender or deliver the unclaimed body to a medical school if the unclaimed body has been offered to and requested by the medical school.

**History.** Acts 1959, No. 22, § 2; A.S.A. 1947, § 82-405; Acts 2017, No. 147, § 4; 2019, No. 954, § 3.

**Amendments.** The 2019 amendment substituted "if the body of a deceased person has not been claimed" for "if the dead human body has not been claimed", inserted "of the unclaimed body", inserted "unclaimed", and substituted "medical school if the unclaimed body has been offered to and requested by the medical school" for "medical school, if so requested by it".

## 20-17-706. Cost of embalming and transportation.

(a) If a medical school is offered an unclaimed body and determines that there is a need for the unclaimed body, that the unclaimed body is suitable for anatomical science or study, and that the unclaimed body has not been embalmed, then the medical school, at its expense, shall immediately arrange for proper embalmment of the unclaimed body by a licensed embalmer, either with the person having possession, charge, or control of the unclaimed body if the person is a licensed embalmer or licensed funeral director or with any other licensed embalmer or licensed funeral director.

(b) If the body has been embalmed before the claim of the medical school, as is customary, or the body is embalmed by its direction according to the provisions of this subchapter, the medical school shall pay twenty-five dollars ($25.00) as a reimbursement of embalming expenses and shall assume costs for transportation of the body when shipment is at its direction.

(c) Should the body be embalmed before legal claim, any person or organization asserting legal claim to the body within forty-eight (48) hours after death as provided in this subchapter shall assume responsibility for at least twenty-five dollars ($25.00) of the cost thereof, together with reasonable costs for transportation of the body which may have been incurred.

(d) If the deceased had provided for the use of his or her body for medical science under the Revised Arkansas Anatomical Gift Act, § 20-17-1201 et seq., and provided funds in his or her estate for burial, the medical school shall be free of all claims for the expenses as ordinarily provided under subsections (a)-(c) of this section.

**History.** Acts 1959, No. 22, §§ 3, 14; A.S.A. 1947, §§ 82-405.1, 82-405.6; Acts 1993, No. 403, § 13; 2013, No. 1132, § 17; 2017, No. 147, § 4; 2019, No. 954, § 4.

**Amendments.** The 2019 amendment, in (a), inserted "is offered an unclaimed body and", inserted "unclaimed" throughout, and substituted "control of the unclaimed body if the person" for "control thereof if the person".

## 20-17-707. Holding period for medical school.

(a) A medical school shall cause any unclaimed body offered and accepted under this subchapter to be retained in a proper state of preservation for fifteen (15) days after the date the unclaimed body is received by the medical school.

(b) During the time period under subsection (a) of this section a relative, a next of kin, a friend, a representative of a fraternal society of which the deceased was a member, a veterans service organization as defined in the Missing in America Project Act, § 20-17-1401 et seq., the Department of Veterans Affairs, the United States Department of Veterans Affairs, or a representative of a charitable or religious group may claim the unclaimed body for burial or cremation at his or her or its expense as stated in § 20-17-706(a)-(c).

(c) If a claim is made, the medical school shall be reimbursed by the claimant for the embalming fee and transportation charges that have been incurred by the medical school in favor of the body claimed.

(d) If the unclaimed body is not claimed by any person or organization within fifteen (15) days from the date of arrival at the medical school, then all right, title, and interest in the unclaimed body shall be deemed to vest in the state for the benefit of the medical school, and any living relative, next of kin, friend, or organization shall be deemed to have consented irrevocably to use of the unclaimed body for the advancement or study of medical science.

**History.** Acts 1959, No. 22, § 6; A.S.A. 1947, § 82-405.4; Acts 2013, No. 723, § 4; 2017, No. 147, § 4; 2019, No. 954, § 5.

**Amendments.** The 2019 amendment rewrote the section.

## Subchapter 8 — Disposition of Human Tissue

SECTION.
20-17-801. Fetus and tissue generally — Definitions.

### 20-17-801. Fetus and tissue generally — Definitions.

(a)(1)(A) Any physician removing or otherwise acquiring human tissue, in his or her discretion, after making or causing to be made scientific examination of the human tissue as he or she may deem appropriate or as may be required by law, custom, or rules and regulations of the hospital or other institution in which the human tissue may have been removed or acquired, may authorize disposition of the human tissue in a respectful and proper manner after separating the human tissue from other medical waste.

(B) The physician may authorize the disposition pursuant to this subsection unless he or she has been furnished, before removal or acquisition of the tissue or at any time before its disposal, a written request that the tissue be delivered to the patient or someone in his or her behalf or, if death has occurred, to the person claiming the dead body for burial or cremation.

(2) However, human tissue shall not be delivered except as may be permitted by rules of the State Board of Health.

(3) Any hospital or other institution acquiring possession of any human tissue and not having written instructions to the contrary from the attending physician, the patient, or the person claiming a dead body for burial or cremation, or someone acting in their behalf, may immediately dispose of the human tissue as provided for in this subsection.

(b)(1)(A) An external member of the human body shall not be disposed of pursuant to subsection (a) of this section within forty-eight (48) hours of its removal or acquisition unless consent is obtained in writing from the patient or the person authorizing the medical or surgical treatment of the patient.

(B) A dead fetus shall be disposed of in accordance with the Arkansas Final Disposition Rights Act of 2009, § 20-17-102.

(2) For the purposes of this section:

(A) "Dead fetus" means a product of human conception exclusive of its placenta or connective tissue, which has suffered death prior to its complete expulsion or extraction from the mother as established by the fact that, after the expulsion or extraction the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles;

(B) "External member of the human body" means an arm or one (1) or more joints of the arm, a hand, a finger or one (1) or more joints of

the finger, a leg or one (1) or more joints of the leg, a foot, a toe or one (1) or more joints of the toe, an ear or the greater part of the ear, or the nose or the greater part of the nose;

(C) "Human tissue" means any tissue of the human body, including without limitation an external member of the human body, placenta, or fetal connective tissue; and

(D) "Respectful and proper manner" means either releasing the human tissue to the patient or authorized person, incineration, burial, or cremation.

(c)(1) The board shall promulgate all reasonable and necessary rules to implement the provisions of this section.

(2) Facilities licensed by the Department of Health shall establish operational policies to implement the board rules and this section.

**History.** Acts 1971, No. 538, §§ 1, 2; A.S.A. 1947, §§ 82-434, 82-435; Acts 2015, No. 535, § 1; 2017, No. 603, §§ 1, 2; 2019, No. 315, §§ 1952, 1953.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (a)(2) and (c)(1).

## Subchapter 10 — Cemetery Act for Perpetually Maintained Cemeteries



### 20-17-1002. Definitions.

As used in this subchapter:

(1) "Care and maintenance" means the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery;

(2)(A) "Cemetery" means any land or a structure in this state dedicated to and used or intended to be used for interment of human remains.

(B) "Cemetery" includes a burial park for earth interments, a mausoleum for vault or crypt interments, or a combination of one (1) or more burial parks or mausoleums;

(3) "Cemetery company" means an individual, partnership, corporation, limited liability company, or association, now or hereafter organized, owning or controlling cemetery lands or property and conducting the business of a cemetery or making an application with the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services to own or control the lands or conduct the business;

(4) "Columbarium" means a structure or room or space in a building or structure used or intended to be used for the interment of cremated human remains;

(5) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person;

(6) "Infant interment garden" means a designated area in a perpetual care cemetery for the interments of infants and children no more than twenty-four (24) months of age;

(7) "Interment" means the lawful disposition of the remains of a deceased person as provided by law;

(8) "Lawn crypt" means an interment space sometimes referred to as a "belowground crypt", "westminister", or "turf top crypt" in a preplaced chamber or burial vault either side-by-side or at multiple depths, covered by earth and sod;

(9) "Lot or grave space" means a space of ground in a cemetery used or intended to be used for interment therein;

(10) "Mausoleum" means a community-type structure or room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches;

(11) "Niche" means a space in a columbarium that is used or intended to be used for the interment of the cremated remains of one (1) or more deceased persons;

(12) "Permit holder" means a cemetery company that holds a permit issued by the board to own or operate a perpetual care cemetery;

(13) "Perpetual care cemetery" means a cemetery for the benefit of which a permanent maintenance fund has been established in accordance with this subchapter; and

(14) "Properly maintained" means, with regard to a perpetual care cemetery, provided care and maintenance services, including without limitation:

(A) Mowing the grass of the perpetual care cemetery;

(B) Weed trimming around lots or grave space and fences or property lines of the perpetual care cemetery;

(C) Emptying trash receptacles located at the perpetual care cemetery; and

(D) Removing excess dirt, tree limbs, leaves, trash, and other debris from the grounds of the perpetual care cemetery.

**History.** Acts 1977, No. 352, § 2; A.S.A. 1947, § 82-426.2; Acts 1997, No. 295, § 1; 2001, No. 1242, § 1; 2007, No. 827, § 163; 2009, No. 714, § 1; 2009, No. 715, §§ 1, 2; 2011, No. 590, § 1; 2017, No. 788, § 31; 2021, No. 731, §§ 1, 2.

**Amendments.** The 2021 amendment redesignated (2) as (2)(A) and (2)(B); in (2)(B), substituted "'Cemetery' includes" for "It may be either" and "burial parks or mausoleums" for "thereof"; added the definition for "Properly maintained"; and made a stylistic change.

## 20-17-1008. Permit — Application.

(a)(1) Before making application to the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services for a permit to

establish and operate a new cemetery or for the extension of the boundaries of an existing cemetery, the cemetery company proposing to make application shall publish weekly for three (3) weeks in a newspaper of general circulation in the county in which the proposed cemetery is located a notice that an application will be filed with the board to establish or extend the boundaries of a cemetery in the county.

(2) The publication described in subdivision (a)(1) of this section shall contain a legal description of the land to be used as a cemetery and a statement that any individual or group of individuals desiring to protest the establishment or extension of the cemetery may do so by filing a statement in writing with the board.

(b)(1) Whenever it is proposed to locate a new cemetery or extend the boundaries of an existing cemetery under this subchapter, then the cemetery company so proposing shall file an application for the issuance of a permit with the board.

(2) The application shall describe accurately the location and boundaries of the proposed cemetery or extension.

(3) The application shall be accompanied by:

(A)(i) The recommendation of the mayor or governing official of the municipality if the cemetery is located or is to be located within the corporate limits of a municipality or the recommendation of the county judge of the county within which the cemetery is to be located if outside the corporate limits of a municipality.

(ii) The recommendation described in subdivision (b)(3)(A)(i) of this section shall:

*(a)* State the need and desirability of the proposed cemetery or extension; and

*(b)* Be in lieu of the application and permit required in § 20-17-903;

(B) A fee of:

(i) One thousand five hundred dollars ($1,500) for filing an application for a new cemetery; or

(ii) Four hundred dollars ($400) for filing an application to extend the boundaries of an existing cemetery;

(C)(i) Except as provided in subdivision (b)(3)(C)(ii), a survey and map of the cemetery or extension reflecting at least ten (10) acres of land.

(ii) An existing cemetery that consists of less than ten (10) acres of land on or before January 1, 2021, is not required to have ten (10) acres of land but shall submit a survey and map of the cemetery or extension of the existing cemetery;

(D) A set of rules and regulations for the use, care, management, and protection of the cemetery;

(E) The proposed method of establishing a permanent maintenance fund;

(F) Proof of publication as stated in subsection (a) of this section of the required notice of intention to apply with the board;

(G) A copy of a current title opinion by an Arkansas-licensed attorney or title insurance policy that reflects that the applicant has

or will have good and merchantable title to the land covered by the permit or extension;

(H) A notarized statement disclosing any current or future lien or mortgage on the land covered by the permit;

(I) A notarized statement from any current or future lienholder or mortgage holder on the land covered by the permit or extension that all paid-in-full burial spaces will be released from the lien or mortgage at least semi-annually;

(J) A copy of the perpetual care trust agreement if the application is for a new cemetery permit; and

(K) A current balance sheet of the applicant prepared by an independent certified public accountant in accordance with generally accepted accounting principles that reflects that the applicant has a minimum of twenty thousand dollars ($20,000) net worth.

(4) Any other evidence that would tend to show a public need for the proposed cemetery or extension, such as a petition from landowners in the county who believe that a need exists for an additional cemetery or extension, may be included with the application.

(5) The burden of establishing public need shall be upon the applicant.

(c) An application shall be made under oath and filed with the board not less than twenty (20) days before the board meeting at which the application is to be considered.

(d)(1) The cemetery company applying for a permit shall designate an individual who is responsible for the application.

(2) The individual designated under subdivision (d)(1) of this section shall undergo and pass a state criminal background check conducted by the Identification Bureau of the Division of Arkansas State Police.

(3) The board may charge and collect a processing fee in the amount necessary to recover the cost imposed by the Identification Bureau of the Division of Arkansas State Police for the state criminal background check.

(e) The board may require a cemetery company to submit additional information as the board may by rule or order prescribe.

(f) The board may for good cause waive all or part of an application requirement of this section if an applicant is a state, city, or municipal government, or a nonprofit organization as defined by the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

**History.** Acts 1977, No. 352, §§ 6-8; A.S.A. 1947, §§ 82-426.6 — 82-426.8; Acts 1997, No. 295, § 4; 2005, No. 2169, § 1; 2013, No. 390, § 3; 2017, No. 788, §§ 36, 37; 2021, No. 731, § 3.

**Amendments.** The 2021 amendment substituted "cemetery company" for "person" in (a)(1); substituted "extension" for "addition" in (b)(2); added the designations within (b)(3)(A) and substituted "is located or is to be located" for "is to be located" in (b)(3)(A)(i); added (b)(3)(C)(ii) and redesignated former (b)(3)(C) as (b)(3)(C)(i); in (b)(3)(C)(i), added "Except as provided in subdivision (b)(3)(C)(ii)" and "reflecting at least ten (10) acres of land"; redesignated former (b)(3)(L) as (b)(4) and former (b)(4) as (b)(5); substituted "with the board" for "with the Insurance Commissioner" in (c); inserted (d) and redesignated former (d) and (e) as (e) and (f); and made stylistic changes.

**20-17-1011. Permit — Amendment.**

(a) Whenever it is proposed that a cemetery subject to this subchapter amend its present permit, whether for construction of a structure such as a mausoleum or columbarium, reduction of boundaries of twenty percent (20%) or more, reduction or increase in percentage of gross sales proceeds to be placed in the permanent maintenance fund, or other amendment, then the cemetery company shall file an application for amendment of the permit.

(b) The application shall be accompanied by:

(1) A fee of four hundred dollars ($400);

(2) A statement of each proposed amendment;

(3) Statements, documents, and other information necessary to provide justification for the amendment;

(4) If the amendment is for construction of a mausoleum, columbarium, or similar structure, the application shall include:

(A) Plans and specifications of the structure;

(B) A report of the inspection of the plans by the Department of Health;

(C) A copy of the sales contracts and conveyance documents proposed to be used;

(D) A proposed contribution to the permanent maintenance fund;

(E) A statement of whether the amount of the sales force will be utilized and of how preconstruction sales and interments will be handled;

(F) The location of the proposed structure;

(G) The estimated completion date;

(H) Either of the following, when sales proceeds may be received by the cemetery company before completion of construction and payment in full of the structure:

(i) An executed escrow agreement approved by the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services with a federally insured financial institution or other financial institution approved by the board that provides among other things that one hundred percent (100%) of the sales proceeds collected before the completion of construction and payment in full of the structure will be placed into escrow; or

(ii)*(a)* An executed copy of the construction agreement for the structure that states the total construction cost and the date the construction will be completed with either an executed irrevocable letter of credit from a federally insured financial institution or other financial institution approved by the board equal to one hundred twenty-five percent (125%) of the total cost of the structure, a cash bond posted with a federally insured financial institution or other financial institution approved by the board equal to one hundred thirty percent (130%) of the total cost of the structure, or a construction performance bond payable to the board in the amount equal to the total cost of the structure as stated in the construction agreement.

*(b)(1)* All letters of credit and bonds, and their issuers, shall be approved by the board.

*(2)* A letter of credit under this subdivision (b)(4)(H)(ii)*(b)* shall state that the funds provided shall be paid to the board for the purpose of completing the construction of the structure or paying in full the completed structure if not done before the completion date stated in the construction agreement.

*(3)* A construction performance bond under this subdivision (b)(4)(H)(ii)*(b)* shall state that the insurer shall advance the funds necessary to complete the construction of the structure or pay for the completed structure, if not done before the date stated in the construction agreement.

*(4)* A cash bond under this subdivision (b)(4)(H)(ii)*(b)* shall provide that the financial institution shall pay the cash proceeds of the bond upon order of the board.

*(5)* Letters of credit or construction bonds shall state that if the structure is not completed and paid for in full within the maximum time provided for construction under this section, the letters of credit or construction bonds shall be used to complete and pay for the structure;

(I) Certification of an estimated start date for construction to take place no later than thirty-six (36) months after the date of the permit and further certifying completion within five (5) years after the date of the permit unless extended for good cause by the board; and

(J) Other information necessary to show that construction will be done in a good and workmanlike manner and be fireproof; and

(5) Other information as the board may by rule or order require.

(c) The application for the amendment of the permit shall be filed with the board at least twenty (20) calendar days before the meeting at which the board will consider the application.

**History.** Acts 1977, No. 352, § 12; A.S.A. 1947, § 82-426.12; Acts 1997, No. 295, § 6; 2005, No. 2169, § 2; 2009, No. 715, §§ 7, 8; 2017, No. 788, §§ 40, 41; 2021, No. 731, §§ 4-6.

**Amendments.** The 2021 amendment, in (a), substituted "structure such as a mausoleum or columbarium" for "mausoleum" and inserted "of twenty percent (20%) or more"; inserted "columbarium" in the introductory language of (b)(4); rewrote (b)(4)(H)(ii); and, in (c), substituted "The application" for "Nine (9) complete copies of the application" and substituted the first occurrence of "board" for "Insurance Commissioner"; and made stylistic changes.

## 20-17-1012. Permit — Transfer of ownership — Definition.

(a) As used in this section, "controlling interest" means the direct or indirect power to direct the management and policies of a perpetual care cemetery or cemetery company by contract or otherwise, other than as an officer or employee of the perpetual care cemetery or cemetery company.

(b)(1)(A) If a change is proposed in the controlling interest of a perpetual care cemetery or a cemetery company or an organization

that, directly or indirectly owns a controlling interest in the perpetual care cemetery or cemetery company, the cemetery company that holds the current permit and the individual or organization proposing to gain the controlling interest shall file an application for the issuance of a new permit with the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services.

(B) A controlling interest is presumed to exist if an individual or entity directly or indirectly:

(i) Owns or controls fifty-one percent (51%) or more of the aggregate number of the issued or outstanding ownership interest of a perpetual care cemetery or cemetery company; or

(ii) Holds proxies with the power to vote or voting rights to proxies representing fifty-one percent (51%) or more of the aggregate number of the issued or outstanding ownership interest of a perpetual care cemetery or cemetery company.

(2) The application shall be accompanied by:

(A)(i) A fee of one thousand five hundred dollars ($1,500).

(ii) However, the fee described in subdivision (b)(2)(A)(i) of this section shall not be required if the individual or entity described in subdivision (b)(1)(B)(i) or subdivision (b)(1)(B)(ii) of this section is the heir to the estate of the individual who previously held the controlling interest in the permit;

(B) A statement of changes, if any, in the survey and map of the cemetery;

(C) A set of rules and regulations for the use, care, management, and protection of the cemetery;

(D) The proposed method of continuing the permanent maintenance fund for the cemetery;

(E) A statement of the proposed transfer;

(F) A copy of a current title opinion by an Arkansas-licensed attorney or title insurance policy that reflects that the current permit holder has good and merchantable title to the land covered by the permit;

(G) A notarized statement from the seller and purchaser disclosing any current or future lien or mortgage on the land covered by the permit;

(H) A notarized statement from each current or future lienholder or mortgage holder on the land covered by the permit that all paid-in-full burial spaces will be released from the lien or mortgage at least semiannually;

(I)(i) A current detailed accounting of all paid-in-full merchandise contracts or accounts of the permit holder for which the merchandise has not been delivered to the purchaser or placed in inventory for the benefit of the purchaser.

(ii) The accounting shall be on an individual contract or account basis and contain the name of the purchaser, the contract or account number, the date of the contract, the gross amount of the contract, a description of the merchandise purchased, the date the contract or

account was paid in full, and the specific location where the merchandise is stored;

(J) A current notarized statement from the permit holder that the application contains a complete and accurate accounting of all of his or her outstanding accounts receivable, discounted notes, and paid-in-full merchandise accounts or contracts for which the merchandise has not been delivered to the purchaser or placed in inventory for the benefit of the purchaser;

(K) A current notarized statement from the purchaser or organization gaining a controlling interest that it will assume the responsibility and liability for the accounts, notes, and contracts of the permit holder contained in the accountings and schedules filed with the application;

(L) The financial statement of the purchaser required by rule of the board showing that the purchaser has a minimum net worth of twenty thousand dollars ($20,000);

(M) A copy of the sales contract, transaction documents, or conveyance documents; and

(N) Any additional information required by the board or the Insurance Commissioner.

(3) The board may for good cause waive all or part of an application requirement if the purchaser of a perpetual care cemetery is a state, city, or municipal government or a nonprofit organization as defined by § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

(4) Each permit holder of an interest in the cemetery company is liable for any funds and transactions up to the date of the sale or transfer.

(c)(1) Before the sale or transfer, the permit holder shall notify the board of the proposed sale or transfer and shall submit to the board, under oath, any document or record the board may require in order to demonstrate that the permit holder is not indebted to the permanent maintenance fund.

(2) After the transfer of ownership or a controlling interest, the permit holder shall present to the board proof that payments into the permanent maintenance fund are current.

(3) The board may require proof of the status of the permanent maintenance fund by the purchaser for a reasonable period of time as necessary in the public interest.

(4) The board may recover from the permit holder or purchaser for the benefit of the permanent maintenance fund:

(A) All sums that the permit holder or purchaser has not properly accounted for and paid into the trust fund; and

(B) Reasonable expenses incurred by the board if suit is filed or other collection action is taken.

(d) A cemetery company that has been issued a permit to operate a cemetery under this subchapter remains liable for the care and maintenance of the cemetery and all amounts owed to the permanent maintenance fund until a new permit is issued to the purchaser.

(e) A new permit shall not be issued to the purchaser of any cemetery until the purchaser complies with this subchapter and the board orders a new permit to be issued to the purchaser.

(f) A permit holder or purchaser that violates this section is guilty of a violation and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for the violation.

**History.** Acts 1977, No. 352, §§ 11, 21; A.S.A. 1947, §§ 82-426.11, 82-426.21; Acts 1997, No. 295, § 7; 2001, No. 1242, § 3; 2001, No. 1553, § 32; 2005, No. 1994, § 113; 2005, No. 2169, § 3; 2009, No. 429, § 1; 2011, No. 590, § 3; 2017, No. 788, §§ 42, 43; 2021, No. 731, § 7.

**Amendments.** The 2021 amendment redesignated former (b)(2)(A) as (b)(2)(A)(i); and added (b)(2)(A)(ii).

## 20-17-1013. Permanent maintenance fund generally.

(a)(1)(A) The permanent maintenance fund is a trust fund for the purpose of administration, care, and maintenance of the cemetery, including lots, graves, spaces, crypts, niches, and burial rights.

(B) The principal of the permanent maintenance fund shall be preserved except for withdrawals allowed under § 20-17-1014(b)(1)(C)(ii)*(b)*.

(2)(A) The net income generated from the investment of the principal of the permanent maintenance fund shall be paid to and expended by the owners, managers, officers, or directors of the cemetery company exclusively for the care and maintenance of the cemetery, including the payment of taxes and administrative expenses of maintaining the fund.

(B) A cemetery company may add unused net income to the principal of the permanent maintenance fund.

(3) Except as provided in subdivision (a)(4) of this section, the principal of the permanent maintenance fund shall be invested and remain invested in securities and funds permitted by the laws of Arkansas for the investment of policy reserves of life insurance companies under the Arkansas Insurance Code, § 23-60-101 et seq., and in the common trust funds of state or national banks.

(4)(A) A permanent maintenance fund having assets of more than two hundred fifty thousand dollars ($250,000) may invest not more than fifty percent (50%) of its assets in nonassessable common stocks listed on a national securities exchange, preferred stocks meeting the requirements of § 23-63-815, and investment trust securities meeting the requirements of § 23-63-820.

(B) The diversification restrictions of § 23-63-805 do not apply to investments in investment trust securities.

(5) In investing these funds, the trustee shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence exercise in management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income and capital appreciation as well as the probable safety of the capital.

(6)(A) For purposes of this section, no more than fifty percent (50%) of annual realized net capital gains on investments bought or acquired after January 1, 2013, may be considered income and used according to subdivision (a)(2) of this section.

(B) All other net capital gains on investments shall be added to the principal.

(b) The permanent maintenance fund is authorized by this subchapter, and all sums paid into it or contributed to it shall be deemed to be for charitable and eleemosynary purposes.

(c) No rule against perpetuities shall be applicable to funds as mentioned in this section.

(d)(1) The trust fund shall be established by executing a written trust agreement approved by the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services.

(2)(A) The agreement may provide that the cemetery company may change the trustee of its trust fund by amending the agreement if:

(i) The successor trustee meets the requirements of § 20-17-1014; and

(ii) The trustee and successor trustee are parties to the amendment of the agreement.

(B) The trustee and successor trustee shall send the board notification of a change in trustee under subdivision (d)(2)(A) of this section within ten (10) calendar days after the change.

(e) At a minimum, the trustee shall maintain the following:

(1) A general ledger and general journal or comparable books of entry showing all receipts, disbursements, assets, liabilities, and income of the trust fund;

(2) Documents supporting and verifying each asset of the trust fund; and

(3) A trust agreement.

(f) In establishing a permanent maintenance fund, the cemetery company may from time to time adopt plans for the general care and maintenance of its cemetery.

(g)(1) No more than one (1) time every ten (10) years, a cemetery company may make a withdrawal from the permanent maintenance fund for the purpose of making infrastructure repairs and capital improvements to the perpetual care cemetery.

(2) A withdrawal under subdivision (g)(1) of this section shall not be made without prior approval from the board.

**History.** Acts 1977, No. 352, §§ 13, 14; A.S.A. 1947, §§ 82-426.13, 82-426.14; Acts 2007, No. 240, § 3; 2011, No. 590, § 4; 2013, No. 390, § 4; 2017, No. 788, § 44; 2021, No. 343, § 1; 2021, No. 731, § 8.

**Amendments.** The 2021 amendment by No. 343 added (g).

The 2021 amendment by No. 731 added "except for withdrawals allowed under § 20-17-1014(b)(1)(C)(ii)*(b)*" in (a)(1)(B).

**20-17-1014. Permanent maintenance fund trustees.**

(a) The net income from the permanent maintenance fund shall only be used for general maintenance, administration, and preservation of the perpetual care cemetery.

(b)(1) A cemetery company shall establish a permanent maintenance fund with or transfer the permanent maintenance fund to:

(A) A state or national bank or federal savings bank with trust powers;

(B)(i) Three (3) trustees.

(ii) If the cemetery company has a permanent maintenance fund with three (3) trustees as described in subdivision (b)(1)(B)(i) of this section, the trustees shall:

*(a)* Designate one (1) of the three (3) trustees to make disbursements from the trust fund; and

*(b)* The disbursing trustee described in subdivision (b)(1)(B)(ii)*(a)* of this section shall deposit with the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services a fidelity bond with corporate surety payable to the trust fund in a penal sum not less than eighty percent (80%) of the value of the trust fund principal at the beginning of each calendar year.

(iii) If a cemetery company has a permanent maintenance fund with three (3) trustees as described in subdivision (b)(1)(B)(i) of this section, no more than one (1) of the trustees may have a direct or indirect financial interest in the perpetual care cemetery; or

(C) An individual trustee:

(i) Shall deposit with the board a fidelity bond with corporate surety payable to the trust fund in a penal sum not less than eighty percent (80%) of the value of the trust fund principal at the beginning of each calendar year; and

(ii) On behalf of the cemetery company shall deposit all permanent maintenance funds directly into a savings account or certificate of deposit in a state or national bank or savings and loan association in this state not less than forty-five (45) days after collection if:

*(a)* The funds deposited are federally insured;

*(b)* The funds are restricted to prevent the principal amount of the funds from being withdrawn without the written approval of and on a form approved by the board; and

*(c)* Not less than one (1) time per year the net income from the funds may be withdrawn by the individual trustee on behalf of the cemetery company for purposes permitted by this subchapter.

(2) If a permanent maintenance fund of a cemetery contains less than ten thousand dollars ($10,000), a bond is not required when a cemetery has designated trustees under subdivision (b)(1)(B) or subdivision (b)(1)(C) of this section.

(c)(1) The board may require a trustee who fails to protect the principal of the permanent maintenance fund under § 20-17-1013 to pay an additional contribution to the permanent maintenance fund of

twenty-five dollars ($25.00) per day for each day that the principal is deficient.

(2) The additional contribution made under subdivision (c)(1) of this section shall not exceed a total of one thousand dollars ($1,000) for a continuous violation.

**History.** Acts 1977, No. 352, § 13; A.S.A. 1947, § 82-426.13; Acts 2011, No. 590, § 5; 2011, No. 1148, § 1; 2013, No. 390, § 5; 2017, No. 788, §§ 45, 46; 2021, No. 731, § 9.

**Amendments.** The 2021 amendment rewrote (b).

### 20-17-1015. Permanent maintenance fund — Annual report.

(a)(1) Within seventy-five (75) days after the end of each calendar year, the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services shall require the trustee of the permanent maintenance fund to file under oath a detailed annual report of the condition of the fund.

(2) The annual report shall include:

(A) A description of the assets of the fund;

(B) A description of cemetery property encumbered by a lien and the amount of the lien;

(C) The cost of acquiring each asset;

(D) The market value of the asset at the time of its acquisition, its current market value, and the status of any default;

(E) A statement that:

(i) The fund is not encumbered by debt; and

(ii) None of the assets of the fund constitute loans to:

*(a)* The cemetery company for which the trust fund is established; or

*(b)* An officer or director of the cemetery company; and

(F) Any other information the trustee or the board deems pertinent.

(b) The report shall show the amounts of principal and undistributed income of the fund at the beginning of the period, the amounts deposited by the cemetery company into the fund during the period, the income earned and disbursements made during the period, the details of any investment or reinvestment during the period, and the balances of principal and income at the end of the period being reported on.

(c)(1) If the trustee of the permanent maintenance fund fails to meet the requirements of this section, then the board may apply to the Pulaski County Circuit Court for an order to require the trustee of the permanent maintenance fund to file a proper report and to make any additional contributions due to the failure to timely file the annual report.

(2)(A) If trust funds have been misappropriated by the trustee or are not being handled as required by law, then the board shall apply to the circuit court in the county in which the cemetery is located to

have a receiver or conservator appointed by the court to take custody of the trust funds for the benefit of the cestui que trust.

(B) The receiver or conservator is vested with full power to file such suits against the defaulting trustee as may be necessary to require a full accounting and restoration of the trust funds and to turn the residue over to another trustee as the cemetery shall select, in conformity with this subchapter, as the new trustee of the permanent maintenance fund.

(3) If the trustee does not timely file the annual report required by subsection (a) of this section, the board may require the trustee to pay an additional contribution to the permanent maintenance fund of no more than fifty dollars ($50.00) per day until the report is filed with the board.

**History.** Acts 1977, No. 352, § 16; 1981, No. 512, § 4; A.S.A. 1947, § 82-426.16; Acts 1997, No. 295, § 8; 2011, No. 590, § 6; 2013, No. 390, § 6; 2017, No. 788, § 47; 2021, No. 731, § 10.

**Amendments.** The 2021 amendment, in (c)(1), inserted "permanent maintenance" twice and substituted "the board may" for "it shall be the duty of the board to"; redesignated (c)(2) as (c)(2)(A) and (B); and inserted the first occurrence of "trust" in (c)(2)(A).

## 20-17-1020. Unlawful act.

It is unlawful for a cemetery company to bury or inter a body in any driveway, roadway, path, alley, or walk.

**History.** Acts 1977, No. 352, § 18; A.S.A. 1947, § 82-426.18; Acts 2021, No. 731, § 11.

**Amendments.** The 2021 amendment substituted "is" for "shall be" and "a cemetery" for "any cemetery"; and inserted "driveway, roadway".

## 20-17-1025. Protection of cemeteries — Power to lend — Insolvent Cemetery Loan Fund.

(a) The State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services shall maintain a segregated fund within its general operating fund to be known as the Insolvent Cemetery Loan Fund, which shall be administered by the Insurance Commissioner and only used to lend a court-appointed receiver or conservator the funds necessary to assure that a cemetery will be properly maintained and will continue to be a going concern, including the funds necessary to pay a reasonable surety bond premium that is required to be posted by the court.

(b) The board may take any legal action necessary against a cemetery company, receiver, or conservator to recover funds loaned by the board to or for the benefit of the cemetery, cemetery company, receiver, or conservator for the payment of maintenance expenses or unpaid loans.

(c) Disbursement from the Insolvent Cemetery Loan Fund for loans to a receiver or conservator shall be made on a "first in, first out" basis as determined by the commissioner.

(d) The commissioner may accept donations to the board from any cemetery company, organization, or individual to fund loans under this section.

(e) The board may waive payment or extend the payment period for a loan made to a receiver or conservator if the board determines that it is unlikely that the receiver or conservator has or will receive sufficient funds to repay the loan and that the funds were or are needed to maintain and operate the cemetery for the benefit of the lot owners and the general public.

(f) Any funds that accumulate in the Insolvent Cemetery Loan Fund in excess of one hundred eighty thousand dollars ($180,000) may at the request of the board be transferred to the Insolvent Cemetery Grant Fund under the Insolvent Cemetery Grant Fund Act, § 20-17-1301 et seq.

**History.** Acts 1997, No. 295, § 11; 2001, No. 1242, § 5; 2009, No. 429, § 2; 2017, No. 788, § 56; 2021, No. 731, § 12.

**Amendments.** The 2021 amendment added "Insolvent Cemetery Loan Fund" to the section heading; in (a), deleted "On August 1, 2001" from the beginning, substituted "shall maintain a segregated fund" for "shall segregate one hundred eighty thousand dollars ($180,000)", and inserted "which shall be"; and made a stylistic change.

### 20-17-1026. Annual permit fee.

(a) Within seventy-five (75) days after the end of the calendar year, each permit holder shall pay to the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services a permit renewal fee in the amount of one hundred dollars ($100).

(b) All annual permit fees shall be classified as general funds of the board and shall be used to make loans to receivers and conservators as provided in § 20-17-1025.

**History.** Acts 2001, No. 1242, § 6; 2005, No. 2169, § 5; 2017, No. 788, § 57; 2021, No. 731, § 13.

**Amendments.** The 2021 amendment substituted "Within seventy-five (75) days after the end of the calendar year" for "By March 1 of each year" in (a).

### 20-17-1029. [Repealed.]

**Publisher's Notes.** This section, concerning cemetery advisory boards, membership, organization, and authority, was repealed by Acts 2021, No. 343, § 2, effective July 28, 2021. The section was derived from Acts 2007, No. 430, § 3; 2009, No. 952, § 5; 2017, No. 788, § 60.

## Subchapter 13 — Insolvent Cemetery Grant Fund Act

SECTION.

### 20-17-1305. Eligibility for grants — Definition.

(a)(1) As used in this section, "eligible organization" means an organization that agrees to provide for the care and improvement of a perpetual care cemetery that is insolvent or in financial distress as determined by the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services.

(2) "Eligible organization" includes a nonprofit organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

(b) An eligible organization is eligible to receive a grant under this subchapter for the care and improvement of a perpetual care cemetery if the perpetual care cemetery:

(1) Has historical significance to the local community or the State of Arkansas; or

(2) Is insolvent or in financial distress.

**History.** Acts 2009, No. 429, § 3; 2015, No. 990, § 2; 2017, No. 788, § 64; 2021, No. 343, § 3.

**Amendments.** The 2021 amendment substituted "is eligible" for "may be eligible" in the introductory language of (b); deleted former (b)(1) and redesignated former (b)(2) and (3) as (b)(1) and (2); substituted "historical" for "historic" in (b)(2); and substituted "or" for "and" at the end of (b)(1).

## CHAPTER 18

## VITAL STATISTICS ACT

SUBCHAPTER.



### Subchapter 1 — General Provisions

SECTION.



### 20-18-105. Penalties.

(a) The following persons shall be punished by a fine of not more than ten thousand dollars ($10,000) or by imprisonment for not more than five (5) years, or both:

(1) Any person who knowingly makes any false statement in a certificate, record, or report required to be filed under this chapter, or in an application for an amendment thereof or in an application for a certified copy of a vital record or who knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate, or amendment thereof;

(2) Any person who without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required to be filed under this chapter or a certified copy of the certificate, record, or report;

(3) Any person who knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another for any purpose of deception any certificate, record, report, or certified copy thereof so made, counterfeited, altered, amended, or mutilated or which is false in whole or in part or which relates to the birth of another person, whether living or deceased;

(4) Any employee of the Division of Vital Records or any office designated under § 20-18-203(b) who knowingly furnishes or processes a certificate of birth or certified copy of a certificate of birth with the knowledge that it be used for the purposes of deception; and

(5) Any person who without lawful authority possesses any certificate, record, or report required by this chapter or a copy or certified copy of the certificate, record, or report knowing that it has been stolen or otherwise unlawfully obtained.

(b) The following persons shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one (1) year, or both:

(1) Any person who knowingly refuses to provide information required by this chapter or rules adopted pursuant to this chapter;

(2) Any person who knowingly transports or accepts for transportation, interment, or other disposition, a dead body without an accompanying permit as provided in this chapter; or

(3) Any person who knowingly neglects or violates any of the provisions of this chapter or refuses to perform any of the duties imposed upon him or her by this chapter.

**History.** Acts 1981, No. 120, § 27; A.S.A. 1947, § 82-527; Acts 1995, No. 1254, § 4; 2007, No. 827, § 164; 2019, No. 315, § 1954.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (b)(1).

## Subchapter 2 — Administration



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the

fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-18-202. Regulatory powers of the State Board of Health.

The State Board of Health may adopt, amend, and repeal rules for the purpose of carrying out this chapter. All rules adopted under this chapter shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

**History.** Acts 1981, No. 120, § 3; A.S.A. 1947, § 82-503; Acts 1995, No. 1254, § 6; 1997, No. 179, § 29; 2019, No. 315, § 1955.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" twice.

## 20-18-203. State Registrar of Vital Records.

(a) The Secretary of the Department of Health shall appoint the State Registrar of Vital Records.

(b)(1) The state registrar shall:

(A) Administer and enforce this chapter and the rules issued under this chapter and issue instructions for the efficient administration of the statewide system of vital statistics;

(B) Direct and supervise the statewide system of vital statistics and the Division of Vital Records and be custodian of its records;

(C) Direct, supervise, and control the activities of all persons when they are engaged in activities pertaining to the operation of the statewide system of vital statistics;

(D) Conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics;

(E) Prescribe, with the approval of the State Board of Health, furnish, and distribute forms required by this chapter and the rules issued under this chapter or prescribe such other means for transmission of data as will accomplish the purpose of complete and accurate registration;

(F) Prepare and publish in a timely manner annual reports of vital statistics of this state and such other reports as may be required by the board; and

(G) Provide in a timely manner to local health agencies, and for public releases, copies of data derived from certificates and reports required under this chapter, as deemed necessary for local health planning and program activities. The state registrar shall establish a schedule with each local health agency for transmittal of the copies or data.

(2) The state registrar may establish or designate additional offices in the state to aid in the efficient administration of the statewide system of vital statistics.

(3) The state registrar may delegate functions and duties vested in him or her to employees of the division and to employees of an office established or designated under subdivision (b)(2) of this section.

(4)(A) The state registrar shall provide copies of certificates or reports required under this chapter or data derived from such certificates or reports, as deemed necessary, to the Arkansas Center for Health Statistics of the Department of Health for statistical analysis and presentation.

(B) The state registrar shall establish a schedule for the transmittal with the division.

(C) The records or data shall remain the property of the division, and the uses which may be made of the records or data shall be governed by the state registrar.

(D) A schedule for the disposition of the certificates, reports, or data provided under this subdivision (b)(4) shall be established by the state registrar.

(5) To protect the integrity of vital records and to prevent the fraudulent use of birth certificates of deceased persons, the state registrar may match birth and death certificates, in accordance with rules, which require proof beyond a reasonable doubt of the fact of death and to post the facts of death to the appropriate birth certificate and mark the birth certificate "Deceased". Copies issued from birth certificates of deceased persons shall be similarly marked.

**History.** Acts 1981, No. 120, §§ 4, 5; A.S.A. 1947, §§ 82-504, 82-505; Acts 1989, No. 396, § 1; 1995, No. 1254, § 7; 1995, No. 1295, § 1; 2019, No. 315, §§ 1956, 1957; 2019, No. 910, § 5013.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b)(1)(A); and substituted "rules" for "regulations" in the first sentence of (b)(5).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a).

## Subchapter 3 — Records Generally



### 20-18-301. Content of certificates and reports.

(a) In order to promote and maintain nationwide uniformity in the system of vital statistics, the forms of certificates, reports, and records required by this chapter or by rules adopted under this chapter shall

include as a minimum the items recommended by the federal agency responsible for national vital statistics.

(b) Each certificate, report, record, and form required by this chapter shall be prepared in the format approved by the State Registrar of Vital Records.

(c) All vital records and reports shall contain the date of filing.

(d) Information required in certificates, reports, records, or forms authorized by this chapter may be filed, verified, registered, and stored by photographic, electronic, or other means as prescribed by the state registrar.

**History.** Acts 1981, No. 120, § 6; A.S.A. 1947, § 82-506; Acts 1995, No. 1254, § 8; 2019, No. 315, § 1958.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (a).

## 20-18-302. Persons required to keep records.

(a)(1) Every person in charge of an institution as defined in this chapter shall keep a record of personal data concerning each person admitted or confined to the institution.

(2) The record shall include such information as required by the certificates of birth and death and the reports of fetal death and induced termination of pregnancy forms required by this chapter.

(3) The record shall be made at the time of admission from information provided by the person being admitted or confined, but when it cannot be so obtained, the information shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record.

(b) When a dead body is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the decedent, date of death, name and address of the person to whom the dead body or fetus is released, and date of removal from the institution or if finally disposed of by the institution, the date, place, and manner of disposition shall be recorded.

(c) A funeral director, embalmer, sexton, or other person who removes from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any certificate or other report required by this chapter or rules promulgated under this chapter, shall keep a record which shall identify the dead body, and such information pertaining to the receipt, removal, and delivery of the dead body as may be required in rules adopted by the State Board of Health.

(d) Records maintained under this section shall be retained for a period of not less than one (1) year and shall be made available for inspection by the State Registrar of Vital Records or his or her representative upon demand.

**History.** Acts 1981, No. 120, § 25; A.S.A. 1947, § 82-525; Acts 1995, No. 1254, § 9; 2019, No. 315, § 1959.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" twice in (c).

**20-18-303. Duty to furnish information.**

(a) Any person having knowledge of the facts shall furnish such information as he or she may possess regarding any birth, death, spontaneous fetal death, induced termination of pregnancy, marriage, divorce, or annulment upon demand of the State Registrar of Vital Records.

(b) Any person or institution that in good faith provides information required by this chapter or rules promulgated under this chapter shall not be subject to any action for damages.

(c) Not later than the tenth day of the month following the month of occurrence, the administrator of each institution shall send to the Division of Vital Records a list showing all births and deaths occurring in that institution during the preceding month. The lists shall be on forms approved by the state registrar.

(d) Not later than the tenth day of the month following the month of occurrence, each funeral director shall send to the division a list showing all dead bodies embalmed or otherwise prepared for final disposition or dead bodies finally disposed of by the funeral director during the preceding month. The list shall be made on forms provided by the state registrar.

**History.** Acts 1981, No. 120, § 26; A.S.A. 1947, § 82-526; Acts 1995, No. 1254, § 10; 2019, No. 315, § 1960.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (b).

**20-18-304. Disclosure of information prohibited — Exceptions.**

(a) To protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics, it shall be unlawful for any person to permit inspection of or to disclose information contained in vital records or vital reports or to copy or issue a copy of all or part of any vital record or vital report except as authorized by this chapter and by rule or by order of a court of competent jurisdiction.

(b)(1) The State Board of Health may authorize by rule the disclosure of information contained in vital records for research purposes.

(2) The rules shall provide for adequate standards of security and confidentiality of vital records and vital reports.

(3)(A) Disclosure of information which may identify any person or institution named in any vital record or vital report may be made only pursuant to rules which require submission of written requests for information by researchers and execution of agreements that protect the confidentiality of the information provided.

(B) The agreements shall prohibit the release by the researcher of any information that might identify any person or institution other than releases that may be provided for in the agreement.

(4) Nothing in this section prohibits the release of information or data which would not identify any person or institution named in a vital record or vital report.

(c)(1) Appeals from decisions of custodians of vital records or vital reports designated under § 20-18-203(b) who refuse to disclose information from vital records or vital reports as prescribed by this section and the rules issued under this section shall be made to the State Registrar of Vital Records, whose decision shall be binding upon such custodians.

(2) Within three (3) working days of the receipt of an appeal of a decision of a custodian of a vital record or vital report designated under § 20-18-203(b), the state registrar shall issue a decision on the appeal.

(d)(1) The state registrar shall send to the county assessor of each county within this state a monthly report listing the residents of that county who have died.

(2) The report shall be sent to each county assessor by email.

**History.** Acts 1981, No. 120, § 22; A.S.A. 1947, § 82-522; Acts 1995, No. 1254, § 11; 1995, No. 1295, § 2; 2005, No. 1892, § 3; 2013, No. 501, § 3; 2019, No. 315, § 1961.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (a) and (b)(1); and substituted "rules" for "regulations" throughout the section.

## 20-18-305. Issuance of certified copies and data from system of vital statistics.

In accordance with § 20-18-304 and the rules adopted pursuant to § 20-18-304:

(1)(A) The State Registrar of Vital Records and other custodians of vital records designated by the state registrar under § 20-18-203(b)(2) shall upon receipt of written application issue a certified copy of a vital record in their custody or a part thereof to the registrant, his or her spouse, child, parent, or guardian or his or her respective authorized designated representative.

(B) A requester as defined in § 9-9-801 is authorized to obtain a certified copy of an adoptee's original certificate of birth.

(C) Others may be authorized to obtain certified copies when they demonstrate that the vital record is needed for the determination or protection of their personal or property rights.

(D) The State Board of Health may adopt rules to further define those who may obtain copies of vital records filed under this chapter;

(2) All forms and procedures used in the issuance of certified copies of vital records in the state shall be uniform and approved by the state registrar. All certified copies issued shall have security features that deter persons from altering, counterfeiting, duplicating, or simulating the document;

(3) Each copy or abstract issued shall show the date of registration and copies or abstracts issued from records marked "Delayed", "Amended", or "Certificate of Foreign Birth" shall be similarly marked and show the effective date;

(4) A certified copy or other copy of a death certificate containing cause-of-death information shall not be issued except as follows:

(A) Upon specific request of a spouse, child, parent, or other next of kin of the decedent or an authorized representative;

(B) When a documented need for the cause of death to establish a legal right or claim has been demonstrated;

(C) When the request for the copy is made by or on the behalf of an organization that provides benefits to the decedent's survivors or beneficiaries;

(D) Upon specific request by local, state, or federal agencies for research or administrative purposes approved by the state registrar;

(E) When needed for research activities approved by the state registrar; or

(F) Upon receipt of an order from a court of competent jurisdiction ordering the release;

(5) A certified copy of a vital record or any part thereof issued in accordance with subdivision (1) of this section shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated therein, provided that the evidentiary value of a certificate or vital record filed more than one (1) year after the event, or a vital record which has been amended, or a certificate of foreign birth shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence;

(6) The federal agency responsible for national vital statistics may be furnished such copies or data from the system of vital statistics as it may require for national statistics. The state registrar shall enter into an agreement with the federal agency that specifies the statistical or research purposes for which the records, reports, or data may be used. The agreement shall also set forth the support to be provided by the federal agency for the collection, processing, and transmission of such records, reports, or data. Upon written request of the federal agency, the state registrar may approve in writing additional statistical or research uses of the records, reports, or data supplied under the agreement;

(7) Upon request, federal, state, local, and other public government agencies may be furnished copies of records, reports, or data, provided that the copies or data shall be used solely in the conduct of their official duties;

(8)(A)(i) By agreement, the state registrar may transmit copies of records and other reports required by this chapter to offices of vital statistics outside this state when the records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions.

(ii) The agreement shall require that the transcripts be used for statistical and administrative purposes only as specified in the agreement.

(iii) The agreement shall provide instruction for the proper retention and disposition of copies.

(B) Copies received from other jurisdictions by the Division of Vital Records shall be handled in the same manner as prescribed in this subdivision (8);

(9) When one hundred (100) years have elapsed after the date of birth or fifty (50) years have elapsed after the date of death, marriage, divorce, or annulment, the records of these events in the custody of the state registrar shall become available to the public without restriction, in accordance with rules which shall provide for the continued safekeeping of the records;

(10) Nothing in this section shall be construed to permit disclosure of information contained in the "Information for Medical and Health Use Only" section of the birth certificate or the "Information for Statistical Purposes Only" section of the certificate of marriage or certificate of divorce or annulment, unless specifically authorized by the state registrar for statistical or research purposes;

(11) No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a vital record except as authorized in this chapter or rules adopted pursuant to this chapter; and

(12) When the state registrar receives information that a certificate may have been registered through fraud or misrepresentation, he or she shall withhold issuance of any copy of that certificate pending an administrative hearing to determine whether fraud or misrepresentation has occurred. The state registrar shall offer the registrant or the registrant's authorized representative notice and opportunity to be heard. If upon conclusion of the hearing no fraud or misrepresentation is found, copies may be issued. If upon conclusion of the hearing, fraud or misrepresentation is found, the state registrar shall remove the certificate from the file. The certificate and evidence shall be retained but shall not be subject to inspection or copying, except upon order of a court of competent jurisdiction or by the state registrar for purposes of administering the vital statistics program.

**History.** Acts 1981, No. 120, § 23; A.S.A. 1947, § 82-523; Acts 1995, No. 1254, § 12; 2017, No. 519, § 2; 2019, No. 315, § 1962.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" throughout the section.

## 20-18-307. Amendment of vital records and reports.

(a) A certificate, vital report, or vital record registered under this chapter may be amended only in accordance with this chapter and rules adopted by the State Board of Health to protect the integrity and accuracy of vital records and vital reports.

(b)(1) A certificate, vital report, or vital record that is amended under this section shall be marked "AMENDED". The date of amendment, the identity of the person making the amendment, and a summary description of the evidence submitted in support of the amendment shall be made a part of the vital record or vital report.

(2) The board shall prescribe by rule the conditions under which additions or minor corrections may be made to certificates or vital

records within one (1) year after the date of the event without the certificate's or vital record's being considered as amended.

(c) Upon receipt of a certified copy of an order of a court of competent jurisdiction changing the name of a person born in this state and upon request of the person or his or her parents, guardian or legal representative, the State Registrar of Vital Records shall amend the certificate of birth to show the new name.

(d) Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual born in this state has been changed by surgical procedure and that the individual's name has been changed, the certificate of birth of the individual shall be amended accordingly.

(e) When an applicant does not submit the minimum documentation required in the rules for amending a vital record or when the state registrar has cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence and if the deficiencies are not corrected, the state registrar shall not amend the vital record and shall advise the applicant of the reason for this action. The state registrar shall advise the applicant of his or her right of appeal to a court of competent jurisdiction.

(f) When a certificate or record is amended under this section by the state registrar, the state registrar shall report the amendment to any other custodian of the vital record, and the vital record shall be amended accordingly.

(g) When an amendment is made to a certificate of marriage, divorce, or annulment by the local official issuing the marriage license or the court entering the decree of divorce or annulment, copies of the amendment shall be forwarded to the state registrar.

**History.** Acts 1981, No. 120, § 20; A.S.A. 1947, § 82-520; Acts 1995, No. 1254, § 14; 2019, No. 315, §§ 1963-1965.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (a) and the first sentence of (e); and substituted "rule" for "regulation" in (b)(2).

## 20-18-308. Reproductions of records and files.

(a) To preserve vital records, the State Registrar of Vital Records may prepare typewritten, photographic, electronic, or other reproductions of original records and files in the Division of Vital Records.

(b) When verified and approved by the state registrar, the reproductions shall be accepted as the original records.

(c) The documents from which permanent reproductions have been made may be disposed of as provided by rule.

**History.** Acts 1981, No. 120, § 21; A.S.A. 1947, § 82-521; Acts 1995, No. 1254, § 15; 2019, No. 315, § 1966.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (c).

## Subchapter 4 — Births and Adoptions



### 20-18-401. Birth registration generally.

RESEARCH REFERENCES

**ALR.** Brad Aldridge, Comment: A Constellation of Benefits and a Universe of Equal Protection: The Extension of the Right to Marry Under Pavan v. Smith, 72 Ark. L. Rev. 245 (2019).

### 20-18-402. Delayed registration of birth.

(a) When the certificate of birth of a person born in the state has not been filed within one (1) year, a delayed certificate of birth may be filed in accordance with rules of the State Board of Health. No delayed certificate shall be registered until the evidentiary requirements as specified in rules have been met.

(b) The birth shall be registered on a delayed certificate of birth form and the form shall show on its face the date of registration. The delayed certificate shall contain a summary statement of the evidence submitted in support of the delayed registration.

(c) No delayed certificate of birth shall be registered for a deceased person.

(d)(1) When an applicant does not submit the minimum documentation required in the rules for delayed registration or when the State Registrar of Vital Records has cause to question the validity or adequacy of the applicant's sworn statement or the documentary evidence and, if the deficiencies are not corrected, the state registrar shall not register the delayed certificate of birth and shall advise the applicant of the reasons for this action. The state registrar shall further advise the applicant of his or her right of appeal to a court of competent jurisdiction.

(2) The board may by rule provide for the dismissal of an application which is not actively prosecuted.

**History.** Acts 1981, No. 120, § 9; A.S.A. 1947, § 82-509; Acts 1995, No. 1254, § 17; 2019, No. 315, §§ 1967, 1968.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" twice in (a) and the first sentence of (d)(1); and substituted "rule" for "regulation" in (d)(2).

### 20-18-403. Judicial procedure to register birth.

(a) If the State Registrar of Vital Records refuses to file a certificate of birth under § 20-18-401 or § 20-18-402, a petition may be filed with a court of competent jurisdiction for an order establishing a record of

the date and place of the birth and the parentage of the person whose birth is to be registered.

(b) The petition shall be made on a form prescribed and furnished or approved by the state registrar and shall allege:

(1) That the person for whom a delayed certificate of birth is sought was born in this state;

(2) That no certificate of birth of the person can be found in the Division of Vital Records;

(3) That diligent efforts by the petitioner have failed to obtain the evidence required in accordance with § 20-18-401 or § 20-18-402 and rules adopted pursuant to § 20-18-401 or § 20-18-402;

(4) That the state registrar has refused to file a certificate of birth; and

(5) Such other allegations as may be required.

(c) The petition shall be accompanied by a statement of the state registrar made in accordance with § 20-18-401 or § 20-18-402 and all documentary evidence which was submitted to the state registrar in support of the registration.

(d) The court shall fix a time and place for hearing the petition and shall give the state registrar ten (10) days' notice of the hearing. The state registrar or his or her authorized representative may appear and testify in the proceeding.

(e) If the court finds from the evidence presented that the person for whom a certificate of birth is sought was born in the state, the court shall make findings as to the place and date of birth, parentage, and other findings as the case may require and shall issue an order on a form prescribed and furnished or approved by the state registrar to establish a court-ordered certificate of birth. This order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

(f) The clerk of court shall forward each order to the state registrar not later than the tenth day of the calendar month following the month in which it was entered. The order shall be registered by the state registrar and shall constitute the court-ordered certificate of birth.

**History.** Acts 1981, No. 120, § 10; A.S.A. 1947, § 82-510; Acts 1995, No. 1254, § 18; 2019, No. 315, § 1969.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (b)(3).

## 20-18-404. Infants of unknown parentage.

(a) Whoever assumes the custody of a live-born infant of unknown parentage shall report on a form and in a manner prescribed by the State Registrar of Vital Records within ten (10) days to the Division of Vital Records the following information:

(1) The date and city or county, or both, of finding;

(2) Sex and approximate birth date of child;

(3) Name and address of the person or institution with whom the child has been placed for care;

(4) Name given to the child by the custodian of the child; and

(5) Other data required by the state registrar.

(b) The place where the child was found shall be entered as the place of birth.

(c) A report registered under this section shall constitute the certificate of birth for the child.

(d) If the child is identified and a certificate of birth is found or obtained, the report registered under this section shall be placed in a special file and shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by rule.

**History.** Acts 1981, No. 120, § 8; A.S.A. 1947, § 82-508; Acts 1995, No. 1254, § 19; 2019, No. 315, § 1970.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (d).

## 20-18-406. New certificates.

(a) The State Registrar of Vital Records shall establish a new certificate of birth for a person born in this state when he or she receives the following:

(1) A certificate of adoption as provided in § 9-9-219, or a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth. However, a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person; or

(2) A request that a new certificate be established and any evidence, as required by rule, proving that the person has been legitimated, or that a court of competent jurisdiction has determined the paternity of the person or that both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(b) When a new certificate of birth is established, the actual city or county, or both, and date of birth shall be shown. The new certificate shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity determination, or legitimation shall not be subject to inspection except upon order of an Arkansas court of competent jurisdiction or as provided by rule or under § 9-9-803.

(c) Upon receipt of a report of an amended certificate of adoption, the certificate of birth shall be amended as provided by rule.

(d) Upon receipt of a report of annulment of adoption, the original certificate of birth shall be restored to its place in the files, and the new certificate and evidence shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by rule.

(e) Upon written request of both parents and receipt of a sworn acknowledgment of paternity signed by both parents of a child born out of wedlock, the state registrar shall reflect paternity on the certificate of

birth in the manner prescribed by rule if paternity is not already shown on the certificate of birth.

(f)(1) Upon request, the state registrar shall prepare and register an Arkansas certificate of birth for a person born in a foreign country, who is not a citizen of the United States, and for whom a final order of adoption has been entered in a court of competent jurisdiction in Arkansas when he or she receives the following:

(A) A certificate of adoption as provided in § 9-9-219;

(B) Proof of the date and place of the adopted child's birth; and

(C) A request by the court decreeing the adoption, the adoptive parents, or the adopted person if eighteen (18) years of age or older.

(2) After preparation of the birth certificate in the new name of the adopted person, the state registrar shall seal and file the certificate of adoption. This certificate shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by rule or as otherwise provided by state law.

(3) The birth certificate shall show the actual foreign country of birth and shall state that the certificate is not evidence of United States citizenship for the child for whom it is issued.

(g) If no certificate of birth is on file for the person for whom a new birth certificate is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings, a delayed certificate of birth shall be filed with the state registrar as provided in § 20-18-402 or § 20-18-403 before a new certificate of birth is established. The new certificate of birth shall be prepared on the delayed birth certificate form.

(h) When a new certificate of birth is established by the state registrar, all copies of the original certificate of birth in the custody of any other custodian of vital records in this state shall be sealed from inspection or forwarded to the state registrar as he or she shall direct.

**History.** Acts 1981, No. 120, § 12; 1985, No. 351, § 2; A.S.A. 1947, § 82-512; Acts 1987, No. 219, § 1; 1995, No. 1254, § 21; 2017, No. 519, § 3; 2019, No. 315, §§ 1971-1973.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" throughout the section.

### RESEARCH REFERENCES

**ALR.** Brad Aldridge, Comment: A Constellation of Benefits and a Universe of Equal Protection: The Extension of the Right to Marry Under Pavan v. Smith, 72 Ark. L. Rev. 245 (2019).

## Subchapter 5 — Marriages, Annulments, and Divorces

SECTION.

### 20-18-501. Marriage registration.

(a) A record of each marriage performed in this state shall be filed with the Division of Vital Records and shall be registered if it has been completed and filed in accordance with this section.

(b) The official who issues the marriage license shall prepare the record on the form prescribed by the State Registrar of Vital Records upon the basis of information obtained from one (1) of the parties to be married.

(c) Every person who performs a marriage shall certify the fact of marriage and return the record to the official who issued the license within fifteen (15) days after the ceremony.

(d) Every official issuing marriage licenses shall complete and forward to the division on or before the thirtieth day of each calendar month the records of marriages filed with him or her during the preceding calendar month.

(e) A marriage record not filed within the time prescribed by statute may be registered in accordance with rules promulgated by the State Board of Health.

**History.** Acts 1981, No. 120, § 18; A.S.A. 1947, § 82-518; Acts 1995, No. 1254, § 23; 2019, No. 315, § 1974.

**Amendments.** The 2019 amendment substituted "rules promulgated" for "regulations" in (e).

## Subchapter 6 — Deaths



### 20-18-601. Registration generally.

(a)(1) A death certificate for each death that occurs in this state shall be filed with the Division of Vital Records or as otherwise directed by the State Registrar of Vital Records within ten (10) days after the death or the finding of a dead body and shall be registered if the death certificate has been completed and filed in accordance with this section.

(2) A fact-of-death record for each death that occurs in this state shall be filed with the division within three (3) calendar days after the death or the finding of a dead body.

(3)(A) If the place of death is unknown but the dead body is found in this state, the death certificate shall be completed and filed in accordance with this section.

(B) The place where the dead body is found shall be shown as the place of death.

(C)(i) If the date of death is unknown, it shall be determined by approximation.

(ii) If the date cannot be determined by approximation, the date found shall be entered and identified as such.

(4)(A) If a death occurs in a moving conveyance in the United States and the dead body is first removed from the conveyance in this state, the death shall be registered in this state, and the place where the dead body is first removed shall be considered the place of death.

(B) If a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the dead body is first removed from the conveyance in this state, the death shall be registered in this state, but the certificate shall show the actual place of death insofar as the place of death can be determined.

(C) In all other cases, the place where death is pronounced shall be considered the place where death occurred.

(b) The funeral director or the person acting as the funeral director who first assumes custody of the dead body shall:

(1) File the death certificate and fact-of-death record;

(2) Obtain the personal data from the next of kin or the best qualified person or source available;

(3) Obtain the medical certification from the person responsible for the medical certification, as set forth in subsection (c) of this section; and

(4) Provide a death certificate that contains sufficient information to identify the decedent to the certifier.

(c)(1)(A)(i) The medical certification shall be completed, signed, and returned to the funeral director within three (3) business days after receipt of the death certificate by the physician in charge of the patient's care for the illness or condition that resulted in death, except when inquiry is required by § 12-12-315, § 12-12-318, or § 14-15-301 et seq.

(ii) Except as provided in subsection (i) of this section, a medical certification shall be completed using the electronic process or system designated by the division.

(B)(i) In the absence of the physician or with his or her approval, the certificate may be completed and signed by his or her associate physician, by the chief medical officer of the institution in which death occurred, by the pathologist who performed an autopsy upon the decedent, or by a registered nurse as provided in this subsection, if the individual has access to the medical history of the case and has reviewed the coroner's report, if required, and if the death is due to natural causes.

(ii) The individual completing the cause-of-death section of the certificate shall attest to its accuracy either by a signature as authorized under subsection (i) of this section or by approved electronic process.

(2)(A) The Arkansas State Medical Board shall enforce by rule subdivision (c)(1) of this section concerning the time period in which the medical certification shall be executed.

(B)(i) If a physician refuses or otherwise fails to complete, sign, and return the medical certification to the funeral director within

three (3) business days as required by subdivision (c)(1) of this section, the funeral director may notify the board of the failure to complete, sign, or return the medical certification within three (3) business days as required by subdivision (c)(1) of this section.

(ii) The board shall assess against a physician described in subdivision (c)(2)(B)(i) of this section a fine not to exceed two hundred fifty dollars ($250) unless the physician shows good cause for the refusal or failure.

(3) A registered nurse employed by the attending hospice may complete and sign the medical certification of death and pronounce death for a patient who is terminally ill, whose death is anticipated, who is receiving services from a hospice program certified under § 20-7-117, and who dies in a hospice inpatient program or as a hospice patient in a nursing home or hospital.

(4)(A) If the hospice patient dies in the home, the registered nurse may make pronouncement of death.

(B) However, the coroner and the chief law enforcement official of the county or municipality where death occurred shall be immediately notified in accordance with § 12-12-315.

(5)(A) The Department of Health shall provide hospitals, nursing homes, and hospices with the appropriate death certificate forms, which will be made available to the certifier of death through an approved electronic process or system or another process designated by the division under subsection (i) of this section.

(B) When death occurs outside these health facilities, the funeral home shall provide the death certificate to the certifier of death through an approved electronic process or system or another process designated by the division under subsection (i) of this section.

(d)(1) If the cause of death appears to be other than the illness or condition for which the deceased was being treated or if inquiry is required by either of the laws referred to in subsection (c) of this section, the case shall be referred to the office of the State Medical Examiner or coroner in the jurisdiction where the death occurred or the body was found for investigation to determine and certify the cause of death through an approved electronic process or system or another process designated by the division under subsection (i) of this section.

(2) If the State Medical Examiner or county coroner determines that the case does not fall within his or her jurisdiction, he or she shall within twenty-four (24) hours refer the case back to the physician for completion of the medical certification.

(e)(1) When inquiry is required by either of the laws referred to in subsection (c) of this section, the State Medical Examiner or coroner in the jurisdiction where the death occurred or the body was found shall determine the cause of death and shall complete and sign the medical certification within forty-eight (48) hours after taking charge of the case.

(2) A medical certification completed and signed by the State Medical Examiner or coroner shall be completed using an approved electronic

process or system or another process designated by the division under subsection (i) of this section.

(f)(1) If the cause of death cannot be determined within the time periods under subsection (c) or subsection (e) of this section, the medical certification shall be completed as provided by rule.

(2) The attending physician, State Medical Examiner, or county coroner shall give the funeral director or person acting as the funeral director notice of the reason for the delay, and final disposition of the dead body shall not be made until authorized by the attending physician or State Medical Examiner or county coroner.

(g) When a death is presumed to have occurred within this state but the dead body cannot be located, a death certificate may be prepared by the state registrar only upon receipt of an order of a court of competent jurisdiction, which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "PRESUMPTIVE" and shall show on its face the date of death as determined by the court and the date of registration and shall identify the court and the date of the decree.

(h) Upon receipt of autopsy results or other information that would change the information in the cause-of-death section of the death certificate from that originally reported, the certifier immediately shall file a supplemental report of cause of death with the division in order to amend the record.

(i)(1) Upon request, the department may grant a waiver from the requirement of subdivision (c)(1)(A)(ii) of this section that a medical certification be completed using an electronic process or system if a person requesting the waiver:

(A) Regularly signs fewer than ten (10) medical certifications per year; or

(B) Shows other good cause for a waiver as determined by the department in its discretion.

(2) A physician who is granted a waiver under subdivision (i)(1) of this section:

(A) Shall not be fined under subdivision (c)(2)(B) of this section for failure to submit medical certification using an electronic process or system; and

(B) Is liable for failure to submit a medical certification in a timely manner under subdivision (c)(1)(A)(i) of this section.

**History.** Acts 1981, No. 120, § 13; A.S.A. 1947, § 82-513; Acts 1989, No. 396, § 3; 1995, No. 311, § 1; 1995, No. 1254, § 25; 2007, No. 702, § 1; 2009, No. 1288, § 2; 2017, No. 1078, § 1; 2019, No. 315, § 1975; 2019, No. 975, §§ 1, 2; 2021, No. 674, § 1.

**Publisher's Notes.** Acts 2019, No. 975, § 1 specifically amended this section as amended by Acts 2019, No. 315.

**Amendments.** The 2019 amendment by No. 315 substituted "rule" for "regulation" in the first sentence of (f) [now (f)(1)].

The 2019 amendment by No. 975 rewrote (c) through (f); and added (i).

The 2021 amendment deleted former (i)(1)(A) and (B) and redesignated the remaining subdivisions accordingly; and, in (i)(1)(A), substituted "ten (10)" for "five (5)" and "per year" for "per month".

### 20-18-602. Delayed registration.

(a) When a death occurring in this state has not been registered within the time period prescribed by § 20-18-601, a certificate may be filed in accordance with rules promulgated by the State Board of Health. The certificates shall be registered subject to such evidentiary requirements as the board shall by rule prescribe to substantiate the alleged facts of death.

(b) When an applicant does not submit the minimum documentation required by rule for delayed registration or when the State Registrar of Vital Records has cause to question the validity or adequacy of the applicant's sworn statement or the documentary evidence, and if the deficiencies are not corrected, the state registrar shall not register the delayed certificate of death and shall advise the applicant of the reasons for this action and further advise the applicant of his or her right to appeal to a court of competent jurisdiction.

(c) Certificates of death registered one (1) year or more after the date of death shall be marked "DELAYED" and shall show on their face the date of the delayed registration.

**History.** Acts 1981, No. 120, § 14; A.S.A. 1947, § 82-514; Acts 1995, No. 1254, § 26; 2019, No. 315, § 1976.

**Amendments.** The 2019 amendment substituted "rules promulgated" for "regulations" in the first sentence of (a); and substituted "rule" for "regulation" in the second sentence of (a) and in (b).

### 20-18-603. Registration of termination of pregnancy.

(a)(1)(A)(i) A fetal death, when the fetus completed twelve (12) weeks' gestation or more, calculated from the date the last normal menstrual period began to the date of delivery, that occurs in this state shall be reported within five (5) days after delivery to the Division of Vital Records or as otherwise directed by the State Registrar of Vital Records.

(ii) An induced termination of pregnancy shall be reported in the manner prescribed in subsection (b) of this section and shall not be reported as a fetal death.

(B) When a dead fetus is delivered in an institution, the person in charge of the institution or his or her designated representative shall prepare and file the fetal death certificate.

(C) When a dead fetus is delivered outside an institution, the physician in attendance at or immediately after delivery shall prepare and file the fetal death certificate.

(D) When a fetal death required to be reported by this section occurs without medical attendance at or immediately after the delivery, or when inquiry is required by § 12-12-301 et seq. or § 14-15-301 et seq. or otherwise provided by law, the State Medical Examiner or coroner shall investigate the cause of fetal death and shall prepare and file the report within five (5) days.

(E)(i) When a fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this state or when a

fetus is found in this state and the place of fetal death is unknown, the fetal death shall be reported in this state.

(ii) The place where the fetus was first removed from the conveyance or the fetus was found shall be considered the place of fetal death.

(2) Spontaneous fetal deaths when the fetus has completed less than twelve (12) weeks of gestation shall be reported as prescribed in subsection (b) of this section.

(b)(1) Each induced termination of pregnancy which occurs in this state regardless of the length of gestation shall be reported to the division within five (5) days by the person in charge of the institution in which the induced termination of pregnancy was performed.

(2) If the induced termination of pregnancy was performed outside an institution, the attending physician shall prepare and file the report.

(c)(1)(A) The reports required under this section are statistical reports to be used only for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital statistics.

(B) A schedule for the disposition of these reports shall be provided for by rule.

(2) Reports required under this section shall not include the name or other personal identification of the individual having an induced or spontaneous termination of pregnancy.

**History.** Acts 1981, No. 120, §§ 15, 16; 1983, No. 835, §§ 1, 2; A.S.A. 1947, §§ 82-515, 82-516; Acts 1995, No. 1254, § 27; 2017, No. 168, § 2; 2019, No. 315, § 1977.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (c)(1)(B).

## 20-18-604. Final disposition of dead body or fetus.

(a) The funeral director or the person acting as the funeral director who first assumes custody of a dead body shall obtain authorization for final disposition of the dead body as provided in the rules.

(b) Prior to final disposition of a dead fetus, irrespective of the duration of pregnancy, the funeral director, the person in charge of the institution, or other person assuming responsibility for final disposition of the fetus shall obtain from the parents authorization for final disposition on a form prescribed by the State Registrar of Vital Records.

(c) With the consent of the physician or State Medical Examiner or county coroner, who is to certify the cause of death, a dead body may be moved from the place of death for the purpose of being prepared for final disposition.

(d) An authorization for final disposition issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the dead body or fetus in this state.

(e) Authorization for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus. The authorization shall be

issued by the state registrar to a licensed funeral director or person acting as such upon proper application.

**History.** Acts 1981, No. 120, § 17; A.S.A. 1947, § 82-517; Acts 1989, No. 396, § 4; 1995, No. 1254, § 28; 2019, No. 315, § 1978.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (a).

**CASE NOTES**

**Disinterment.**

Circuit court erred in denying parents' petition for exhumation because the parents, as their daughter's next of kin, were not prevented from disinterring her and burying her in the family plot as the plain wording of § 20-17-102 and the regulations pertaining to disinterment allowed the next of kin to make that decision; the parents were in complete agreement, and the daughter's mother-in-law had no say in her disinterment. Welch v. Faulkner, 2019 Ark. App. 207, 575 S.W.3d 448 (2019).

## Subchapter 7 — Putative Father Registry

SECTION.


### 20-18-701. Definitions.

As used in this subchapter:

(1) "Child" means a person under eighteen (18) years of age for whom paternity has not been established;

(2) "Court" means a court in this state or another state or territory of the United States of competent subject matter jurisdiction;

(3) [Repealed.]

(4) "Father" means the biological male parent of a child;

(5) "Putative father" means any man not legally presumed or adjudicated to be the biological father of a child but who claims or is alleged to be the father of the child;

(6) "Registrant" means a person who has registered pursuant to this subchapter and who is claiming to be the father of a child;

(7) "Registry" means the Putative Father Registry; and

(8) "Rules" means rules promulgated by the Department of Health for the purpose of implementing this subchapter.

**History.** Acts 1989, No. 496, § 1; 2019, No. 315, § 1979; 2019, No. 389, § 34.

**Amendments.** The 2019 amendment by No. 315, in (8), substituted "Rules" for "Regulations" and substituted "rules" for "regulations".

The 2019 amendment by No. 389 repealed (3).

### 20-18-702. Creation.

**RESEARCH REFERENCES**

**Ark. L. Rev.** Lacey Johnson, Comment: Low-Income Fathers, Adoption, and the Biology Plus Test for Paternal Rights, 70 Ark. L. Rev. 1113 (2018).

# CHAPTER 19

# ANIMALS

SUBCHAPTER.



## Subchapter 3 — Rabies Control Act

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-19-309. Area quarantine.

(a)(1) The Secretary of the Department of Health shall place certain areas under a rabies quarantine upon request of proper local officials.

(2) In serious situations, the secretary may place the area under quarantine without waiting for a local request.

(b) The occurrence of three (3) or more positive rabies cases in animals shall be sufficient basis for placing an area under quarantine.

(c) The positive rabies cases shall be laboratory-confirmed by the Public Health Laboratory or any other laboratory acceptable to or approved by the secretary.

**History.** Acts 1968 (1st Ex. Sess.), No. 11, § 4; 1975, No. 725, § 3; A.S.A. 1947, § 82-2404; Acts 2019, No. 910, § 5014.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a)(1); and substituted "secretary" for "director" in (a)(2).

## 20-19-311. Administration by Secretary of the Department of Health.

The Secretary of the Department of Health or his or her official representative shall have the responsibility for carrying out the provisions of this subchapter.

**History.** Acts 1968 (1st Ex. Sess.), No. 11, § 2; 1975, No. 725, § 1; A.S.A. 1947, § 82-2402; Acts 2019, No. 910, § 5015.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in the section heading and in the text.

### Subchapter 4 — Ownership and Breeding of Wolves and Wolf-Dog Hybrids

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-19-406. Vaccination.

(a) Wolves and wolf-dog hybrids are required to be vaccinated against rabies by a licensed veterinarian with a vaccine approved for dog use, and a rabies certificate may be issued.

(b) Veterinarians shall inform the owner of the wolf or wolf-dog hybrid, preferably in writing, that the vaccination is considered "off label" and that protection against rabies is not guaranteed.

(c) If a wolf or wolf-dog hybrid bites a person, the following criteria shall be used by an official of the Department of Health in dealing with the animal:

(1) The decision shall consider, at least:

(A) The epidemiology and risk of rabies in the species of animal in question;

(B) Possible prior exposure to a rabies vector;

(C) Behavior of the animal at the time of the bite;

(D) Prior rabies vaccinations; and

(E) Other circumstances that may exist;

(2) In some situations, the department shall consider the initiative and willingness of the individual so exposed to submit to postexposure antirabies immunization after being adequately informed of all potential risks;

(3) Upon written order by the Secretary of the Department of Health or a specifically designated representative, any biting animal determined to be at significant risk for the transmission of rabies shall be humanely killed and the brain tissue submitted for testing; and

(4) The department has the authority to order the quarantine of an animal determined to be a very low risk for the transmission of rabies for a thirty-day observation period as an alternate method to euthanasia and testing.

(d) Owners shall be notified and given three (3) business days to provide proof to the department in their animal's defense before the animal can be euthanized.

(e) If in the future the United States Department of Agriculture approves the use of rabies vaccines in wolves or wolf-dog hybrids, or both, then wolves and wolf-dog hybrids will fall under the same rules as dogs regarding biting humans and rabies control.

**History.** Acts 2001, No. 1768, § 6; 2019, No. 315, § 1980; 2019, No. 910, § 5016.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (e).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (c)(3).

## Subchapter 6 — Nonhuman Primates

SECTION.


### 20-19-603. Exemptions.

(a) Section 20-19-602(a), (c), and (d) and § 20-19-605 do not apply to:

(1) Either:

(A) An institution accredited by a zoological accreditation agency, including without limitation the Association of Zoos and Aquariums, or the Zoological Association of America; or

(B) A certified related facility that coordinates with an Association of Zoos and Aquariums Species Survival Plan Program for breeding of species listed as threatened or endangered under 16 U.S.C. § 1533, as it existed on January 1, 2013;

(2) A research facility as defined in the Animal Welfare Act, 7 U.S.C. § 2132(e), as it existed on January 1, 2013;

(3) A wildlife sanctuary;

(4) A temporary holding facility;

(5) A licensed veterinarian for the purpose of providing treatment to a primate;

(6) A law enforcement officer for purposes of enforcement or investigation;

(7) A circus defined as an exhibitor holding a Class C license under the Animal Welfare Act, 7 U.S.C. § 2131 et seq., as it existed on January 1, 2013, that:

(A) Is in the state for less than ninety (90) days per year;

(B) Regularly conducts performances featuring live, dangerous, wild animals and multiple trained human entertainers, including clowns and acrobats; and

(C) Does not allow a member of the public to be in proximity to a dangerous, wild animal without sufficient distance and protective barriers, including without limitation offering photographic opportunities next to a dangerous, wild animal;

(8)(A) A person temporarily transporting a legally owned primate, including an ape, macaque, or baboon, through this state if:

(i) The transit time is not more than ten (10) days;

(ii) The primate, including an ape, macaque, or baboon, is not exhibited; and

(iii) The transporter has complied with all state laws and federal regulations regarding the transport.

(B)(i) A transporter exempted under subdivision (a)(8)(A) of this section shall provide notice of the transport to the Arkansas State Game and Fish Commission before entering the state, identifying the number and type of primate, including an ape, macaque, or baboon, that will be transported.

(ii) The notification required under subdivision (a)(8)(B)(i) of this section is in addition to a veterinary certificate or other permit required by state, local, or federal law; or

(9) A person that is temporarily transporting a legally owned primate under § 20-19-604.

(b) However, a registered primate owner, including an ape, macaque, or baboon owner, may transfer a registered primate, including an ape, macaque, or baboon.

**History.** Acts 2013, No. 1337, § 1; 2015, No. 1243, § 1; 2019, No. 315, § 1981.

**Amendments.** The 2019 amendment inserted "laws" in (a)(8)(A)(iii).

# CHAPTER 20

# PESTS AND PESTICIDES

SUBCHAPTER.



## Subchapter 2 — Arkansas Pesticide Use and Application Act

SECTION.



SECTION.

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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-20-203. Definitions.

As used in this subchapter:

(1) "Animal" means all vertebrate and invertebrate species including, but not limited to, humans and other mammals, birds, fish, and shellfish;

(2) "Beneficial insects" means those insects that during their lifecycle are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial;

(3) "Certified applicator" means any individual who is certified under this subchapter to use or supervise the use of any restricted-use pesticide which is restricted to use by certified applicators;

(4) "Commercial applicator" means:

(A) A certified applicator whether or not he or she is a private applicator with respect to some uses who is engaged in the business and uses or supervises the use of any pesticide classified for restricted use or any other pesticide for any purpose on any lands or property other than as provided by this subdivision (4); or

(B) Any person engaged in the business of aerial application of seeds or fertilizers on the lands of another;

(5) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission;

(6) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;

(7) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, receive, deliver, or offer to deliver pesticides in this state;

(8) "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these;

(9) "EPA" means the United States Environmental Protection Agency;

(10)(A) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and on anything that may be growing, habitating, or stored on or in land.

(B) "Equipment" does not include any pressurized hand-sized household apparatus used to apply any pesticide or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making the pesticide application;

(11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended;

(12) "Fungus" means any non-chlorophyll-bearing thallophytes, that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts, as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other animals and except those on or in processed food, beverages, or pharmaceuticals;

(13) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, and comprising six-legged usually winged forms, as for example, beetles, bugs, bees, and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as for example, spiders, mites, ticks, centipedes, and wood lice;

(14) "Labeling" means all labels and all other written, printed, or graphic matter:

(A) Accompanying the pesticide or device at any time; or

(B) To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications in the United States Environmental Protection Agency, the United States Department of Agriculture, the United States Department of the Interior, the United States Department of Health and Human Services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides;

(15) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including and used for transportation;

(16) "License" or "permit" means a written document issued by the State Plant Board or its authorized agent authorizing the purchase,

possession, or use of certain pesticides, restricted-use pesticides, or state restricted-use pesticides;

(17) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, plants, or plant parts. They may also be called "nemas" or "eelworms";

(18) "Noncommercial applicator" means firms, persons, or government agencies that use, supervise the use, or demonstrate the use of any pesticide classified for restricted use and that do not qualify as a private applicator under subdivision (24) of this section nor require a commercial applicator's license under subdivision (4) of this section;

(19) "Person" means any individual, partnership, association, fiduciary, corporation, or any organized group of persons whether incorporated or not;

(20) "Pest" means:

(A) Any insect, rodent, nematode, fungus, or weed; or

(B) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism except viruses, bacteria, or other microorganisms on or in living human or other living animals, which the United States Environmental Protection Agency declares to be a pest under section 25(c)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, or which the board declares to be a pest under § 20-20-206(e);

(21) "Pesticide" means:

(A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and

(B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant;

(22) "Pesticide dealer" means any person who distributes restricted-use pesticides or pesticides whose uses or distribution are further restricted by the board by rule;

(23) "Plant regulator" means any substance or mixture of substances intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce thereof but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;

(24) "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities;

(25) "Restricted-use pesticide" means any pesticide or pesticide use classified for restricted use by the administrator of the United States Environmental Protection Agency;

(26) "State restricted-use pesticide" means any pesticide or pesticide use which, when used as directed or in accordance with a widespread

and commonly recognized practice, the board determines, subsequent to a hearing, requires additional restrictions for that pesticide or pesticide use to prevent unreasonable adverse effects on the environment including humans, land, beneficial insects, animals, crops, and wildlife other than pests;

(27) "Supervise" or "under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied;

(28) "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide;

(29) "Weed" means any plant which grows where not wanted; and

(30) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this subchapter, pests, including, but not limited to, mammals, birds, and aquatic life.

**History.** Acts 1975, No. 389, § 4; A.S.A. 1947, § 77-254; Acts 1995, No. 85, § 1; 1995, No. 110, § 1; 2019, No. 389, § 35.

**Amendments.** The 2019 amendment redesignated former (10) as (9) and former (9) as (10); and substituted "does not include" for "shall not include" in (10)(B).

## 20-20-204. Penalties.

(a)(1) Any commercial or noncommercial applicator, dealer, or pilot who violates any provision of this subchapter or the rules adopted under this subchapter shall be guilty of a violation and upon conviction shall be punished for the first offense by a fine of not less than one hundred dollars ($100) and not more than one thousand dollars ($1,000) and for the second and any additional offense by a fine of not less than five hundred dollars ($500) and not more than two thousand dollars ($2,000).

(2)(A) Any private applicator who violates any provision of this subchapter or the rules adopted under this subchapter subsequent to having received a written warning from the State Plant Board for a prior violation shall be guilty of a violation and upon conviction shall be punished by a fine of not less than one hundred dollars ($100) and not more than five hundred dollars ($500) for each offense.

(B) An offense committed more than three (3) years after a previous conviction or written warning shall be considered as a first offense.

(b) No state court shall allow the recovery of damages from administrative action taken if the court finds that there was probable cause for such an action.

**History.** Acts 1975, No. 389, § 19; A.S.A. 1947, § 77-269; Acts 2005, No. 1994, § 118; 2019, No. 315, § 1982.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (a)(1) and (a)(2)(A).

## 20-20-205. Administration of subchapter by State Plant Board.

(a) This subchapter shall be administered by the State Plant Board.

(b) The functions vested in the board by this subchapter shall be considered to be delegated to the employees of the Department of Agriculture or its authorized representatives.

**History.** Acts 1975, No. 389, §§ 2, 23; A.S.A. 1947, §§ 77-252, 77-273; Acts 2019, No. 910, § 118.

**Amendments.** The 2019 amendment substituted "Department of Agriculture" for "board" in (b).

## 20-20-206. State Plant Board — Powers and duties.

(a)(1) The State Plant Board shall administer and enforce this subchapter and shall have authority to issue rules after a public hearing following due notice to all interested persons to carry out the provisions of this subchapter. When the board finds it necessary to carry out the purpose and intent of this subchapter, rules may relate to the time, place, manner, amount, concentration, or other conditions under which pesticides may be distributed or applied and may restrict or prohibit use of pesticides in designated areas during specified periods of time to prevent unreasonable adverse effects by drift or misapplication to:

(A) Plants, including forage plants, or adjacent or nearby lands;

(B) Wildlife in the adjoining or nearby areas;

(C) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and

(D) Humans, animals, or beneficial insects.

(2) In issuing rules, the board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the United States Government, or other reliable sources. The board may by rule require that notice of a proposed application of a pesticide be given to owners or persons in control of lands adjoining the property to be treated or in the immediate vicinity thereof if it finds that the notice is necessary to carry out the purpose of this subchapter.

(b)(1) For the purpose of uniformity and in order to enter into cooperative agreements, the board shall consider as restricted-use pesticides those uses or pesticides classified as such by the United States Environmental Protection Agency. In addition, the board may declare certain pesticides or pesticide uses as state restricted-use pesticides when after investigation it finds and determines the pesticides or pesticide uses to be injurious to humans, animals, or vegetation other than the pest or vegetation which it is intended to destroy or otherwise requires additional restrictions under the conditions set forth in § 20-20-203(26).

(2) The sale or distribution of pesticides for such uses in Arkansas or their use in pest control or other operation is prohibited, except in

accordance with such rules as may be made by the board after a public hearing.

(3) The rules shall include rules which prescribe the time when and the conditions under which the materials may be used in different areas of the state.

(4) The board in its rules may charge inspection, permit, and license fees sufficient to cover the cost of enforcement of this subsection.

(c) Rules adopted under this subchapter shall not permit any pesticide use which is prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act and regulations or orders issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

(d) Rules adopted under this subchapter as to applicators of restricted-use pesticides as designated under the Federal Insecticide, Fungicide, and Rodenticide Act shall not be inconsistent with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act and regulations promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act.

(e) After notice and opportunity for hearing, the board may declare as a pest any form of plant or animal life, other than humans and other than bacteria, viruses, and other microorganisms on or in living humans or other living animals, which is injurious to health or the environment.

(f) In order to comply with section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, the board may make such reports to the United States Environmental Protection Agency in such form and containing such information as the United States Environmental Protection Agency may from time to time require.

**History.** Acts 1975, No. 389, § 5; A.S.A. 1947, § 77-255; Acts 2019, No. 315, §§ 1983-1985.

**Amendments.** The 2019 amendment, throughout the section, substituted "rules" for "regulations" and deleted "and regulations" following "rules"; and substituted "rule" for "regulation" in the second sentence of (a)(2).

## 20-20-207. Licenses — Classification — Standards.

(a)(1) The State Plant Board may classify or subclassify commercial and noncommercial licenses to be issued under this subchapter as may be necessary for the effective administration and enforcement of this subchapter. The classifications may include, but not be limited to:

(A) Agricultural;

(B) Right-of-way;

(C) Forest;

(D) Aquatic; and

(E) Regulatory pesticide applicators.

(2) Separate subclassifications may be specified as to ground, aerial, or manual methods used by any licensee to apply pesticides or as to the use of pesticides to control insects, plant diseases, rodents, or weeds.

(3) Each classification shall be subject to separate testing procedures and requirements.

(b)(1) The board in promulgating rules under this subchapter shall prescribe standards for the licensing of applicators of pesticides.

(2) The standards shall relate to the use and handling of the pesticides or to the use and handling of the pesticide or class of pesticide covered by the individual's license and shall be relative to the hazards involved.

(3) In determining standards, the board shall consider:

(A) The characteristics of the pesticide formulation such as the acute dermal and inhalation toxicity and the persistence, mobility, and susceptibility to biological concentration;

(B) The use experience which may reflect an inherent misuse or an unexpected good safety record which does not always follow laboratory toxicological information;

(C) The relative hazards of patterns of use such as granular soil applications, ultralow volume or dust aerial applications, or air blast sprayer applications; and

(D) The extent of the intended use.

(c) Further, the board is authorized to adopt standards in conformance with and at least equal to those prescribed by the United States Environmental Protection Agency and such additional standards as it deems necessary.

**History.** Acts 1975, No. 389, § 6; A.S.A. 1947, § 77-256; Acts 2019, No. 315, § 1986.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (b)(1).

## 20-20-209. Licenses — Commercial applicators — Application.

(a) No commercial applicator shall engage in the business of applying restricted-use pesticide or other pesticides or the aerial application of seed or fertilizers to the lands of another at any time without a commercial applicator's license issued by the State Plant Board. Application for a license shall be made in writing to the board on a designated form obtained from the board. Each application for a license shall contain information regarding the applicant's qualifications, the proposed operations, and the license classification for which the applicant is applying, and the application shall include the following:

(1) The full name of the person applying for the license;

(2) If different from that in subdivision (a)(1) of this section, the full name of the individual qualifying under subsection (b) of this section;

(3) If the applicant is a person other than an individual, the full name of the firm, partnership, association, corporation, or group;

(4) The principal business address of the applicant in this state or elsewhere;

(5)(A) The name and address of a person, who may be the Secretary of State, whose domicile is in this state and who is authorized to receive and accept services of summons and legal notice of all kinds for the applicant.

(B) Any nonresident applying for a license under this subchapter shall file a written and certified power of attorney designating an

Arkansas resident or the Secretary of State as the agent of the nonresident upon whom service of process may be had in the event of any suit against the nonresident person. The power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the State of Arkansas over the nonresident applicant.

(C) The Secretary of State shall be allowed such fees therefor as provided by law for designating resident agents;

(6) A description of any equipment used by the applicant to apply pesticides; and

(7) Any other necessary information prescribed by the board.

(b) The board shall not issue a commercial applicator's license until the individual named in subdivision (a)(1) of this section has qualified by passing an examination to demonstrate to the board his or her knowledge of how to apply pesticides under the classifications applied for and his or her knowledge of the nature and effect of pesticides he or she may apply under the classifications. The scope of the examination may be prescribed by rule.

(c)(1) The board shall issue a commercial applicator's license limited to the classifications for which the applicant is qualified if:

(A) The board finds the applicant qualified to apply pesticides in the classifications he or she has applied for;

(B) The applicant files evidence of financial responsibility required under subsection (d) of this section;

(C) The applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Administration; and

(D) The applicant has paid the license, test, and equipment fees prescribed by the board in its rules.

(2)(A) The license shall expire December 31 of each year unless it has been revoked or suspended prior thereto by the board for cause.

(B) A license shall be automatically invalidated if a commercial applicator is at any time or for any reason left without an individual qualified under subsection (b) of this section.

(3) The board may limit the license of the applicant to the use of certain pesticides, to certain areas, or to certain types of equipment if the applicant is only so qualified.

(4) If a license is not issued as applied for, the board shall inform the applicant in writing of the reasons therefor.

(d)(1) The board shall not issue a commercial applicator's license until the applicant has furnished evidence of financial responsibility with the board consisting of one (1) of the following:

(A) A letter of credit from an Arkansas bank guaranteeing financial responsibility;

(B) A surety bond;

(C) An escrow account with an Arkansas bank; or

(D) An insurance policy or certification thereof of an insurer or surplus lines broker authorized to do business in this state insuring the commercial applicator and any of his or her agents against

liability resulting from the operations of the commercial applicator, provided that the insurance is not applied to damages or injury to agricultural crops, plants, or land being worked upon by the commercial applicator.

(2)(A) The amount of liability as provided for in this section shall not be less than that set by the board for each property damage and public liability including loss or damage arising out of actual use of any pesticide. The amount of liability shall be maintained at not less than that sum at all times during the licensing period.

(B) The board shall be notified ten (10) days before any reduction in liability.

(C) The board shall have authority to set deductible amounts on financial responsibility.

(3) Should the liability furnished become unsatisfactory, the applicant shall upon notice immediately execute new liability. If he or she fails to do so, the board shall cancel his or her license and give him or her notice of the fact, and it shall be unlawful thereafter for the person to engage in the business of applying pesticides until the liability is brought into compliance with the requirements of this section and his or her license is reinstated.

(4)(A) Nothing in this subchapter shall be construed to relieve any person from liability for any damages to the person or lands of another caused by the use of pesticides even though the use conforms to the rules of the board.

(B) The violation of any of the provisions of this subchapter by any commercial applicator shall be prima facie evidence of negligence on the part of the person, firm, or corporation committing the violation, and the negligence shall be imputable as provided by existing law.

(e) The board may renew any applicant's license under the classification for which the applicant is licensed, subject to reexamination for any additional knowledge that may be required to ensure a continuing level of competence and ability to use pesticides safely and properly due to changing technology.

(f)(1) The provisions of this section relating to licenses and requirements for their issuance do not apply to a person applying pesticides for his or her neighbors, provided that he or she operates and maintains pesticide application equipment for his or her own use, he or she is not engaged in the business of applying pesticides for hire and does not publicly hold himself or herself out as a pesticide applicator, and he or she operates his or her pesticide application equipment only in the vicinity of his or her owned or rented property and for the accommodation of his or her neighbors.

(2) However, when the person uses or supervises the use of a restricted-use pesticide, the person shall comply with the requirements of § 20-20-210 or § 20-20-211.

**History.** Acts 1975, No. 389, § 8; 1977, No. 758, § 1; A.S.A. 1947, § 77-258; Acts 2019, No. 315, §§ 1987-1989.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (b); substituted "rules" for "regulations" in (c)(1)(D); and deleted "and regulations" following "rules" in (d)(4)(A).

## 20-20-210. Licenses — Noncommercial applicators.

(a) In General.

(1) No noncommercial applicator shall use, supervise the use of, or demonstrate the use of a restricted-use pesticide without a noncommercial applicator's license issued by the State Plant Board.

(2) Application for the license shall be made on forms obtained from the board and shall contain information regarding the applicant's qualifications, the proposed operation, the license classification applied for, and the full name of the individual qualified or to be qualified by passing the examination described in § 20-20-209(b).

(3) If the board finds the applicant qualified to apply pesticides in the classifications applied for and if the applicant has paid testing and license fees required by rule, the board shall issue a noncommercial applicator's license limited to the activities and classifications applied for.

(4) The license shall expire December 31 of each year unless it has been suspended or revoked prior thereto by the board for cause.

(5) A license shall be automatically invalidated if a noncommercial applicator is at any time or for any reason left without an individual qualified under this section.

(6) If the board does not qualify the noncommercial applicator under this section, the board shall inform the applicant in writing of the reasons therefor.

(7)(A) Fees may be waived for state, municipal, or other governmental agencies and their designated employees qualifying by examination.

(B) Noncommercial applicators shall be subject to legal recourse by any person damaged as the result of the application of any pesticide by the applicator.

(C) The violation of any of the provisions of this subchapter by any noncommercial applicator shall be prima facie evidence of negligence on the part of the person, firm, or corporation committing the violation, and such negligence shall be imputable as provided by existing law.

(b) License Renewal. The board may renew the applicant's license under the classifications for which the applicant is licensed, subject to reexamination for any additional knowledge that may be required to ensure a continuing level of competence and ability to use restricted-use pesticides safely and properly due to changing technology.

(c) Exemption. This section shall not apply to persons conducting laboratory research involving restricted-use pesticide and doctors of medicine and doctors of veterinary medicine applying restricted-use pesticides as drugs or medication during the course of their normal practice.

**History.** Acts 1975, No. 389, § 9; A.S.A. 1947, § 77-259; Acts 2019, No. 315, § 1990.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (a)(3).

## 20-20-211. Licenses — Private applicators.

(a) In General.

(1) No private applicator shall use or supervise the use of any restricted-use pesticide without a private applicator's license issued by the State Plant Board, with the license being conditioned on the applicator's complying with the certification requirements determined by the board as necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons for the pesticide use.

(2) Application for a license shall be made in writing on a designated form obtained from the board and shall contain the name and address of the applicant, the kind of agricultural commodity to be produced, information regarding the applicant's qualifications and proposed operations, and any other necessary information prescribed by the board.

(b) Certification Standards. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or types of pesticides the private applicator is to be certified to use shall be relative to hazards involved. In determining these standards, the board shall take into consideration the standards of the United States Environmental Protection Agency and is authorized to adopt these standards by rule.

(c) License Issuance.

(1) If the board finds the applicant competent and if the applicant has paid a minimum application fee of ten dollars ($10.00) for a one-year license or forty-five dollars ($45.00) for a five-year license, the board shall issue a private applicator's license limited to the operation described in the application.

(2) The board shall issue licenses for periods of one (1) year or five (5) years at the option of the applicator. Each license shall expire one (1) year or five (5) years from the issue date of the license, whichever is applicable, unless it has been suspended or revoked for cause prior thereto by the board. In order to support the program, the board shall phase in the private applicator's license renewals at the end of the 2001 license period in such a way as to ensure that the program funding is equally distributed over the licensing period.

(3) A license shall be invalidated automatically if a private applicator is at any time or for any reason left without an individual determined to be competent under subsection (b) of this section.

(4) If a license is not issued as applied for, the board shall inform the applicant in writing of the reasons therefor.

(5) Private applicators shall be subject to recourse by any person damaged as a result of the application of any pesticide by the applicator.

(6) The violation of any of the provisions of this subchapter by any private applicator shall be prima facie evidence of negligence on the

part of the person, firm, or corporation committing the violation, and this negligence shall be imputable as provided by existing law.

**History.** Acts 1975, No. 389, § 11; A.S.A. 1947, § 77-261; Acts 2001, No. 242, § 1; 2019, No. 315, § 1991.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in the second sentence of (b).

## 20-20-212. Licenses — Pilots.

(a) It shall be unlawful for any pilot to apply by means of an aircraft any pesticide, seed, or fertilizer in this state unless the pilot shall have a current valid license issued by the State Plant Board.

(b) The issuance of the license shall be conditioned on his or her filing an application in the form prescribed by the board stating his or her name and address, his or her Federal Aviation Administration commercial or private pilot's certificate number, and his or her meeting any other conditions as may be set by the board in its rules.

(c) The application shall be accompanied by a fee as set by the board in its rules.

(d) Each pilot's license issued under this section shall expire on December 31 of each year.

**History.** Acts 1975, No. 389, § 12; A.S.A. 1947, § 77-262; Acts 2019, No. 315, § 1992.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (b) and (c).

## 20-20-213. Licenses — Pesticide dealers.

(a)(1) It shall be unlawful for any person to act in the capacity of a restricted-use pesticides dealer, to advertise as, assume to act as a dealer of, or distribute any restricted-use pesticide at any time without first having obtained an annual license from the State Plant Board. This license shall limit distribution of restricted-use pesticides only to persons holding a current commercial applicator, noncommercial applicator, private applicator, or dealer's license.

(2) A license shall be required for each location or outlet located within this state from which such pesticides are distributed. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes a restricted-use pesticide directly into this state shall obtain a pesticide dealer license for his or her principal out-of-state location or outlet.

(3) Pesticide dealer licenses shall expire December 31 of each year.

(b) Application for a pesticide dealer's license shall be on a form prescribed by the board and be accompanied by a fee as set by the board in its rules.

(c)(1) Each licensed dealer outlet shall maintain a record of restricted-use pesticides distributed. The record shall contain the name, address, and license number of the commercial applicator, noncommercial applicator, private applicator, or dealer to whom distributed, the date of distribution, and the name and United States Environmental

Protection Agency registration number of the restricted-use pesticide distributed.

(2) The records shall be kept for a period of two (2) years and shall be available for inspection by the board at reasonable times. Upon request in writing, the board shall immediately be furnished with a copy of the records by the restricted-use pesticide dealer.

(d) This section shall not apply to a commercial pesticide applicator who sells restricted-use pesticides only as an integral part of this pesticide application service when the pesticides are dispensed only through equipment used for the pesticide application or any federal, state, county, or municipal agency which provides pesticides only for its own programs.

(e) Each pesticide dealer shall be responsible for the acts of each person employed by him or her in the solicitation and sale of restricted-use pesticides and all claims and recommendations for use of restricted-use pesticides. The dealer's license shall be subject to denial, suspension, or revocation after a hearing for any violation of this subchapter whether committed by the dealer or by the dealer's officer, agent, or employee.

**History.** Acts 1975, No. 389, § 13; A.S.A. 1947, § 77-263; Acts 2019, No. 315, § 1993.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (b).

## 20-20-216. Handling of pesticides and containers — Rules.

(a) No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or to pollute any waterway in any way harmful to any wildlife therein.

(b) The State Plant Board may promulgate rules governing the storage and disposal of pesticides or pesticide containers. In determining these standards, the board shall take into consideration any regulations issued by the United States Environmental Protection Agency.

**History.** Acts 1975, No. 389, § 17; A.S.A. 1947, § 77-267; Acts 2019, No. 315, § 1994.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (b).

## 20-20-217. Inspection and licensing of equipment.

(a) The State Plant Board may inspect any equipment used or intended to be used for application of pesticides and may require repairs or other changes before its further use for pesticide application.

(b) Requirements for equipment may be adopted by rule.

(c) Equipment specified by rule shall be identified by a decal or similar marking furnished by the board. The decal or marking shall be affixed in a location and manner upon the equipment as prescribed by the board.

(d) Fees for the decal or similar marking shall be prescribed by the board in its rules.

**History.** Acts 1975, No. 389, § 8; A.S.A. 1947, § 77-258; Acts 2019, No. 315, § 1995.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (b) and (c); and substituted "rules" for "regulations" in (d).

## 20-20-218. Reports of accidents or incidents — Claims.

(a) The State Plant Board may by rule require the reporting of significant pesticide accidents or incidents to a designated state agency.

(b)(1) Any person claiming damages from a pesticide application shall have filed with the board on a form prescribed by the board a written statement claiming that he or she has been damaged. This report shall have been filed within forty-five (45) days after the date that damages occurred. If a growing crop is alleged to have been damaged, the report shall be filed before the time that twenty-five percent (25%) of the crop has been harvested.

(2) The statement shall contain, but shall not be limited to, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred and the date on which the alleged damage occurred.

(3) The board shall prepare a form to be furnished to persons to be used in these cases. The form shall contain any other requirements as the board may deem proper.

(4) Upon receipt of the statement, the board shall notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility of the damages claimed and furnish copies of the statements as may be requested.

(5) The board shall inspect damages whenever possible, and when it determines that the complaint has sufficient merit, it shall make this information available to the person claiming damage and to the person who is alleged to have caused the damage.

(c) The filing of a report or the failure to file a report need not be alleged in any complaint which might be filed in a court of law. The failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action, nor shall the failure to file a report be a violation of this subchapter.

(d) Where damage is alleged to have occurred, the claimant shall permit the board, the licensee, and his or her representatives, such as his or her insurer, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that the damage may be examined. Failure of the claimant to permit observation and examination of the damaged lands shall automatically bar the claim against the licensee.

**History.** Acts 1975, No. 389, § 14; A.S.A. 1947, § 77-264; Acts 2019, No. 315, § 1996.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (a).

### 20-20-219. Enforcement.

(a)(1) For the purpose of carrying out the provisions of this subchapter, the State Plant Board may enter upon any public or private premises at reasonable times, in order to:

(A) Have access for the purpose of inspecting any equipment subject to this subchapter;

(B) Inspect or sample lands actually or reported to be exposed to pesticides and lands from which the pesticides may have originated;

(C) Inspect storage or disposal areas;

(D) Inspect or investigate complaints of injury to humans or land;

(E) Sample pesticides being applied or to be applied; and

(F) Observe the use and application of pesticides.

(2) Should the board be denied access to any land where access was sought for the purposes set forth in this subchapter, it may apply to any court of competent jurisdiction for a search warrant authorizing access to the land for the purposes set forth in this subchapter. Upon such an application, the court may issue the search warrant for the purposes requested.

(b)(1) With or without the aid and advice of the prosecuting attorney, the board is charged with the duty of enforcing the requirements of this subchapter and any rules issued pursuant to it.

(2) If a prosecuting attorney fails or refuses to act on behalf of the board, the Attorney General may so act.

(c) The board may apply to any court of competent jurisdiction for and the court upon hearing and for cause shown may grant a temporary or permanent injunction restraining any person from violating any provisions of this subchapter, or of the rules made under authority of this subchapter, the injunction to be without bond.

**History.** Acts 1975, No. 389, § 21; A.S.A. 1947, § 77-271; Acts 2019, No. 315, §§ 1997, 1998.

**Amendments.** The 2019 amendment deleted "or regulations" following "rules" in (b)(1), and deleted "and regulations" following "rules" in (c).

### 20-20-224. Information and instruction.

In cooperation with the University of Arkansas or other educational institutions, the State Plant Board may publish information and conduct short courses of instruction in the areas of knowledge required by this subchapter or the rules adopted pursuant to this subchapter.

**History.** Acts 1975, No. 389, § 24; A.S.A. 1947, § 77-274; Acts 2019, No. 315, § 1999.

**Amendments.** The 2019 amendment substituted "rules" for "regulations".

### 20-20-225. Disposition of funds.

All moneys received by the State Plant Board under the provisions of this subchapter and the rules adopted pursuant to this subchapter shall

be deposited into the Plant Board Fund of the State Treasury and be used for carrying out the provisions of this subchapter.

**History.** Acts 1975, No. 389, § 25; A.S.A. 1947, § 77-275; Acts 2019, No. 315, § 2000.

**Amendments.** The 2019 amendment substituted "rules" for "regulations".

## Subchapter 3 — Pesticides and Chemicals Safe for Children Hand-Harvesting Crops

## [Repealed.]

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-20-301 — 20-20-303. [Repealed.]

**A.C.R.C. Notes.** The repeal of this subchapter by Acts 2019, No. 910, § 5017 superseded the amendment of § 20-20-301 by Acts 2019, No. 315, § 2001. The amendment by Act 315 substituted "rule" for "regulation" in (a) and (b).

The repeal of this subchapter by Acts 2019, No. 910, § 5017 superseded the amendment of § 20-20-302 by Acts 2019, No. 315, § 2002. The amendment by Act 315 substituted "rule" for "regulation" in (b).

The repeal of this subchapter by Acts 2019, No. 910, § 5017 superseded the amendment of § 20-20-303 by Acts 2019, No. 910, § 5448. The amendment by Acts 2019, No. 910, § 5448 substituted "Division of Labor" for "Department of Labor" in (3).

**Publisher's Notes.** This subchapter, concerning pesticides and chemicals safe for children hand-harvesting crops, was repealed by Acts 2019, No. 910, § 5017, effective July 1, 2019. The subchapter was derived from the following sources:

20-20-301. Acts 1993, No. 983, § 1; 2019, No. 315, § 2001.

20-20-302. Acts 1993, No. 983, § 1; 2019, No. 315, § 2002.

20-20-303. Acts 1993, No. 983, § 2; 2019, No. 910, § 5448.

# CHAPTER 21

# RADIATION PROTECTION

SUBCHAPTER.



## Subchapter 2 — Ionizing Radiation

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-21-202. Purpose.

It is the purpose of this subchapter to effectuate the policies set forth in § 20-21-201 by providing a program:

(1) Of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) To promote an orderly regulatory pattern within the state, among the states, and between the United States Government and this state and to facilitate intergovernmental cooperation with respect to use and

regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) To establish procedures for assumption and performance of certain regulatory responsibilities with respect to radioactive materials and radiation equipment and to provide for registration of service personnel; and

(4) To permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, § 2; 1983, No. 19, § 2; A.S.A. 1947, § 82-1513; Acts 2021, No. 268, § 1.

**Amendments.** The 2021 amendment, in (3), substituted "radioactive materials" for "by-product, source, and special nuclear materials" and "service personnel" for "persons providing radiation machine installation".

## 20-21-203. Definitions.

As used in this subchapter:

(1) "Accelerator or particle accelerator, medical" means a device used to impart kinetic energy of not greater than one hundred megaelectronvolts (100 MeV) to electrically charged particles such as electrons, protons, deuterons, and helium ions, and which is used for medical purposes;

(2) "Accelerator or particle accelerator, nonmedical" means a device used to impart kinetic energy of not greater than one hundred megaelectronvolts (100 MeV) to electrically charged particles such as electrons, protons, deuterons, and helium ions, and which is not used for medical purposes;

(3) "Accelerator-produced radioactive material" means any material made radioactive, so as to emit radiation spontaneously, by a particle accelerator;

(4) "Assembler" means any person who is engaged in the business of installing or offering to install radiation machines or components associated with radiation machines;

(5) "By-product material" means:

(A) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(B) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute by-product material within this definition;

(C) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity;

(D) Any material that:

(i) Has been made radioactive by use of a particle accelerator; and

(ii) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(E) Any discrete source of naturally occurring radioactive material, other than source material, that:

(i) The United States Nuclear Regulatory Commission, in consultation with the Administrator of the United States Environmental Protection Agency, the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity;

(6) "Calibration sources — consulting services" means any individual, group of individuals, or company possessing a sealed radioactive source used for the calibration of radiation-measuring instruments or devices as authorized by a radioactive material license;

(7) "Civil penalty" means any monetary penalty levied on a licensee or registrant because of violation of statutes, rules, licenses, or registration certificates but does not include criminal penalties;

(8) "Closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance, and monitoring are necessary at the site following termination of licensed operation;

(9) "Decommissioning" means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for post-operational care;

(10) "Dental radiographic unit" means any X-ray device that is subject to the requirements for intraoral dental radiographic systems set forth in the rules for control of sources of ionizing radiation promulgated by the State Board of Health;

(11) "Gas chromatograph and X-ray fluorescence devices" means analytical laboratory instruments designed for qualitative and quantitative analysis using radioactive material as a component of the instrument detector or as a fluorescence excitation source;

(12)(A) "General license" means a license effective pursuant to rules promulgated by the State Radiation Control Agency without the filing of an application with the Department of Health or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of radioactive material or devices or equipment utilizing radioactive material.

(B) "Specific license" means a license issued to a named person upon application filed pursuant to rules promulgated under this subchapter to use, manufacture, produce, transfer, receive, acquire,

own, or possess quantities of radioactive material or equipment utilizing radioactive material.

(C) "Academic broad license" means any radioactive material license issued to a college or university and subject to the special requirements for "specific licenses of broad scope" as set forth in the rules for control of sources of ionizing radiation promulgated by the State Board of Health.

(D) "Academic radioactive material license" means any radioactive material license issued to a college or university, excluding academic broad licenses;

(13) "High-level radioactive waste" means:

(A) Irradiated reactor fuel;

(B) Liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel; and

(C) Solids into which such liquid wastes have been converted;

(14) "Industrial units" means X-ray machines used within the manufacturing industry and other industries and in industrial radiography;

(15) "In vitro laboratory testing" means nonhuman use of radioactive material for laboratory testing in accordance with a general license authorized by the rules for control of sources of ionizing radiation promulgated by the State Board of Health;

(16) "Ionizing radiation" means gamma rays and X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but does not include sound or radio waves or visible, infrared, or ultraviolet light;

(17) "Irradiator" means a device or facility which contains and uses sealed sources for the irradiation of objects or materials;

(18) "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e. (2) of the Atomic Energy Act of 1954;

(19) "Mobile nuclear medicine service" means the transportation and medical use of by-product material and diagnostic instrumentation;

(20) "Naturally occurring radioactive material" means any material of natural origin that emits radiation spontaneously, excluding uranium, thorium, and the tailings produced in their extraction or concentration;

(21) "Nuclear gauge" means a device that uses radioactive material as a means of measurement or testing;

(22) "Nuclear medicine" means human use of radioactive material for diagnostic or therapeutic purposes, not including radioisotope teletherapy;

(23) "Nuclear pharmacy" means a facility licensed by the Arkansas State Board of Pharmacy for the purpose of compounding and dispensing prescription drugs which contain or are intended to be used with radioactive material. In addition, the facility is intended to provide service for more than one (1) medical licensee;

(24) "Panoramic wet source storage irradiator" means a controlled human access irradiator in which the sealed source is contained in a storage pool, usually containing water, and in which the sealed source is fully shielded when not in use. The sealed source is exposed within a radiation room that is maintained as inaccessible during use by interlocked controls;

(25) "Person" means:

(A) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency of this state, political subdivision of this state, of any other state or political subdivision or agency thereof; and

(B) Any legal successor, representative, agent, or agency of the foregoing, but not including United States Government agencies;

(26) "Physician" means a doctor of medicine or doctor of osteopathy licensed by the Arkansas State Medical Board to prescribe drugs in the practice of medicine;

(27) "Private practice" means any use of radioactive material subject to the requirements for licensing of individual physicians for human use of radioactive materials as set forth in the rules for control of sources of ionizing radiation promulgated by the State Board of Health;

(28) "Radiation equipment" means any manufactured product or device, or component part of a product or device, or any machine or system which during operation can generate or emit ionizing radiation, except those which emit radiation only from radioactive material;

(29)(A) "Radioactive material" means any material, whether solid, liquid, or gas, which emits ionizing radiation spontaneously.

(B) "Radioactive material" includes by-product, naturally occurring, source, and special nuclear materials;

(30) "Radioactive waste management" means storage, treatment, or disposal of radioactive wastes;

(31) "Radiography" means the examination of the macroscopic structure of materials by nondestructive methods utilizing sources of ionizing radiation;

(32)(A) "Radioisotope teletherapy" means the use of radiation from a sealed radioactive source for medical treatment.

(B) "Radioisotope teletherapy" does not include radiation from sealed radioactive sources implanted within individuals or on-surface contact with individuals;

(33) "Reciprocity" means the reciprocal recognition of licenses, registrations, or the equivalent issued by the United States Nuclear Regulatory Commission or any agreement state other than Arkansas, subject to provisions for reciprocal recognition of licenses, registrations, or the equivalent as set forth in the rules for control of sources of ionizing radiation promulgated by the State Board of Health;

(34) "Registration" means registration with the Department of Health in accordance with rules promulgated by the State Board of Health;

(35) "Service personnel" means any person who is engaged in the business of offering or performing:

(A) Repair or service of radiation machines and associated radiation machine components;

(B) Repair or service of devices containing radioactive material;

(C) Calibration of radiation machines;

(D) Calibration of radiation instrumentation or devices; or

(E) Furnishing personnel dosimetry services to State Radiation Control Agency licensees or registrants;

(36)(A) "Source material" means:

(i) Uranium, thorium, or any combination thereof, in any physical or chemical form; or

(ii) Ores that contain by weight one-twentieth of one percent (0.05%) or more of uranium, thorium, or any combination thereof.

(B) "Source material" does not include special nuclear material;

(37) "Sources of radiation" means, collectively, radioactive material and radiation equipment;

(38) "Special nuclear material" means:

(A) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the United States Nuclear Regulatory Commission under the provisions of § 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material but does not include source material; or

(B) Any material artificially enriched by any of the foregoing but does not include source material;

(39)(A) "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least one (1) year's decay since being used as a source of energy in a power reactor, and has not been chemically separated into its constituent elements by reprocessing.

(B) "Spent nuclear fuel" includes special nuclear material, by-product material, source material, and other radioactive material associated with fuel assemblies;

(40) "Transuranic waste" means radioactive waste containing alpha-emitting transuranic elements, with radioactive half-lives greater than five (5) years, in excess of ten nanocuries per gram (10 nCi/g);

(41) "Veterinary medicine radiographic systems" means any X-ray device that is subject to the requirements for veterinary medicine radiographic installations set forth in the rules for control of sources of ionizing radiation promulgated by the State Board of Health;

(42) "Wireline service operation" means any evaluation or mechanical service which is performed in a wellbore, using devices on a wireline; and

(43) "X-ray tube" means any electron tube which is designed to be used primarily for the production of X-rays.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, § 3; 1983, No. 19, §§ 3, 4; A.S.A. 1947, § 82-1514; Acts 1987, No. 504, § 1; 1995, No. 796, § 1; 2019, No. 315, § 2003-2009; 2019, No. 389, §§ 36-38; 2019, No. 910, § 5018; 2021, No. 268, § 2.

**Amendments.** The 2019 amendment by No. 315, deleted "and regulations" fol-

lowing "rules" in (17), (20)(C), (23), (37) twice, (43), and (49); substituted "rules" for "regulations" in (20)(A) and (20)(B); and deleted "regulations" following "rules" in (44).

The 2019 amendment by No. 389 repealed (4), (6), and (18).

The 2019 amendment by No. 910 repealed (18).

The 2021 amendment deleted former (4), (6), (9)-(14), (18), (32), and (36), inserted (8), (39), and (40), and redesignated the remaining subdivisions accordingly; rewrote (5), (25)-(27), (34), (36), and (38)(A); substituted "devices" for "radiation machines" in (6); substituted "rules" for "regulations" in (7); inserted "or component part of a product or device" in (28); subdivided (29), and inserted "ionizing" in (29)(A) and deleted "accelerator-produced" following "includes" in (29)(B); subdivided (32); inserted "registrations, or the equivalent" twice in (33); inserted (35)(B) and redesignated the remaining subdivisions accordingly; and made stylistic changes.

**U.S. Code.** Section 51 of the Atomic Energy Act of 1954, referred to in the definition for "Special nuclear material" in this section, is codified as 42 U.S.C. § 2071.

## 20-21-204. Penalties.

(a) Criminal Penalties. Any person who willfully violates any of the provisions of this subchapter or rules or orders in effect pursuant thereto shall be punished by a fine of not less than one hundred dollars ($100) nor more than two thousand dollars ($2,000) or by imprisonment for not more than six (6) months, or by both fine and imprisonment.

(b) Civil Penalties.

(1) Any person may be subject to a civil penalty, to be imposed by the State Radiation Control Agency, not to exceed five thousand dollars ($5,000), that:

(A) Violates any licensing or registration provision of this subchapter or any rule or order issued under this subchapter, or any term, condition, or limitation of any license or registration certificate issued thereunder; or

(B) Commits any violation for which a license or registration certificate may be revoked under rules issued pursuant to this subchapter.

(2) If any violation is a continuing one, each day of the violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

(3) The agency shall have the authority to compromise, mitigate, or remit penalties.

(4) Whenever the agency proposes to subject a person to the imposition of a civil penalty under this subsection, the agency shall notify the person in writing:

(A) Setting forth the date, facts, and nature of each act or omission with which the person is charged;

(B) Specifically identifying the particular provisions of the section, rule, order, license, or registration certificate involved in the violation; and

(C) Advising of each penalty which the agency proposes to impose and its amount.

(5)(A) The written notice shall be sent by registered or certified mail by the agency to the last known address of the person.

(B) The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the agency shall by rule prescribe, why the penalty should not be imposed.

(C) The notice shall also advise the person that upon failure to pay the civil penalty subsequently determined by the agency, if any, the penalty may be collected by civil action.

(6)(A) Upon the request of the agency, the Attorney General may institute civil action to collect a penalty imposed pursuant to this subsection.

(B) The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him or her for collection.

(7)(A) All moneys collected from civil penalties shall be paid to the Treasurer of State for deposit into the General Revenue Fund Account of the State Apportionment Fund.

(B) Moneys collected from civil penalties shall not be used for normal operating expenses of the agency except as appropriations are made from the General Revenue Fund Account of the State Apportionment Fund in the normal budgetary process.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, § 14; 1983, No. 19, § 10; A.S.A. 1947, § 82-1525; Acts 2019, No. 315, §§ 2010-2013.

**Amendments.** The 2019 amendment deleted "regulations" following "rules" in (a); deleted "regulation" following "rule" in (b)(1)(A) and (b)(4)(B); deleted "or regulations" following "rules" in (b)(1)(B); and deleted "or regulation" following "rule" in (b)(5)(B).

## 20-21-205. Enforcement.

(a)(1) The State Radiation Control Agency or its authorized representative shall for reasonable cause have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of this subchapter and rules issued under this subchapter.

(2) However, entry into areas under the jurisdiction of the United States Government shall be effected only with the concurrence of the United States Government or its designated representative.

(b) In the event of an emergency, the agency shall have the authority to impound or order the impounding of sources of ionizing radiation which is in the possession of any person that is not equipped to observe or fails to observe the provisions of this subchapter or any rules issued under this subchapter.

(c) Whenever in the judgment of the agency any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this subchapter or any rule or order issued under this subchapter, the Attorney General, upon written notice thereof by the agency, shall make application to a court of competent jurisdiction for an order enjoining the acts or practices or for an order directing compliance, and upon a showing by the agency that the person has engaged or is about to engage in any such acts or

practices, a permanent or temporary injunction, restraining order, or other order may be granted.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, §§ 6, 11, 13; A.S.A. 1947, §§ 82-1517, 82-1522, 82-1524; Acts 2019, No. 315, §§ 2014-2016.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (a)(1); deleted "or regulations" following "rules" in (b); and deleted "regulation" following "rule" in (c).

## 20-21-206. State Radiation Control Agency — Designation — Employees.

(a) The State Board of Health is designated as the State Radiation Control Agency.

(b) The Secretary of the Department of Health shall designate an individual to perform the functions vested in the agency pursuant to this subchapter.

(c) In accordance with the laws of this state, the agency may employ, compensate, and prescribe the powers and duties of such individuals and consultants as may be necessary to carry out this subchapter.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, § 4; 1969, No. 115, § 1; 1975, No. 382, § 1; 1983, No. 19, §§ 4 [4A], 5; A.S.A. 1947, § 82-1515; Acts 2019, No. 910, § 5019.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (b).

## 20-21-207. State Radiation Control Agency — Powers and duties generally.

(a) For the protection of the occupational and public health and safety, the State Radiation Control Agency shall:

(1) Develop programs for evaluation and control of hazards associated with the use of sources of ionizing radiation;

(2) Develop programs, with due regard for compatibility with federal programs, for regulation of radioactive material and for regulation of radiation equipment;

(3) Formulate, adopt, promulgate, and repeal codes and rules which may provide for licensing or registration relating to control, storage, or disposal of sources of ionizing radiation with due regard for compatibility with the regulatory programs of the United States Government;

(4) Issue such orders or modifications as may be necessary in connection with proceedings under this subchapter. This power is intended for use in conjunction with any licensing or registration authority;

(5) Advise, consult, and cooperate with other agencies of the state, the United States Government, other states and interstate agencies, political subdivisions, and groups concerned with control of sources of ionizing radiation;

(6) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its

functions, from the United States Government and from other sources, public or private;

(7) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation; and

(8) Collect and disseminate information relating to control of sources of ionizing radiation, including:

(A) Maintenance of a file of all license or registration applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(B) Maintenance of a file of general license registrants possessing sources of ionizing radiation requiring registration under this subchapter and any administrative or judicial action pertaining thereto; and

(C) Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon.

(b)(1) The State Radiation Control Agency is authorized to acquire by purchase, acceptance, or condemnation, for and on behalf of the State of Arkansas, any lands, buildings, and grounds where radioactive by-products and wastes produced by industrial, medical, agricultural, scientific, or other organizations can be concentrated, stored, or otherwise disposed of in a manner consistent with public health and safety.

(2) The State Radiation Control Agency may exercise its power to condemn as prescribed by law for condemnation by the Arkansas Department of Transportation in § 27-67-301 et seq.

(3) The State Radiation Control Agency shall not approve any application for a license to receive radioactive waste from other persons for disposal on land not owned by the state or the United States Government.

(c)(1)(A) For licensed activities involving commercial burial of radioactive waste, the State Radiation Control Agency shall, and for other classes of licensed activity the State Radiation Control Agency may, establish by rule standards and procedures to ensure that the licensee will provide an adequate surety or other financial arrangement to permit the completion of all requirements established by the State Radiation Control Agency for the decontamination, closure, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with such licensed activity, in case the licensee should default for any reason in performing such requirements.

(B)(i) All sureties required under subdivision (c)(1)(A) of this section that are forfeited shall be paid to the State Radiation Control Agency for deposit by the Treasurer of State in a special fund called the "Radiation Site Closure and Reclamation Fund".

(ii) All moneys in the Radiation Site Closure and Reclamation Fund are appropriated to and may be expended by the State Radiation Control Agency as necessary to complete such requirements on which licensees have defaulted.

(iii) Moneys in the Radiation Site Closure and Reclamation Fund shall not be used for normal operating expenses of the State Radiation Control Agency.

(2)(A) The State Radiation Control Agency shall allow the Secretary of the Department of Health or his or her authorized representative to require a licensee to deposit funds on an annual, semiannual, or quarterly basis into a trust fund established for the exclusive purpose set out in this subdivision (c)(2).

(B) The Perpetual Maintenance Fund shall be defined so as to embrace each of the following:

(i) A source of revenue to provide for the continuing long-term surveillance, maintenance, and other care of a radioactive waste concentration, storage, and disposal site as described in subsection (b) of this section or a source of revenue to provide for the continuing long-term surveillance, maintenance, and other care of a formerly licensed activity still containing or having associated with it radioactive material, the activity having ceased to operate by reason of default, abandonment, or decommissioning;

(ii) The Perpetual Maintenance Fund shall have two (2) inputs:

*(a)* Fees which are contributed by the lessee or licensee resulting from the operation of concentrating, storing, or disposing of radioactive material as set forth in subsection (b) of this section; and

*(b)(1)* Moneys accrued as interest on a trust fund established by a licensee.

*(2)* All trust fund moneys including moneys accrued as interest on the trust fund, shall be automatically transferred to the Perpetual Maintenance Fund in the event of default, abandonment, or decommissioning;

(iii) Moneys in the Perpetual Maintenance Fund shall be appropriated to the State Radiation Control Agency for use in a way consonant with this subchapter, including such items as long-term site surveillance, maintenance, and other care; and

(iv) All licensee contributions to the Perpetual Maintenance Fund shall be payable to the secretary and deposited by the Treasurer of State.

(C)(i) To provide for the proper care and surveillance of licensed sites subject to subdivision (c)(2)(B)(i) of this section, the state shall have the right to acquire by gift, transfer, purchase, or condemnation from another government agency or private person any lands, buildings, and grounds necessary to fulfill the purposes of this section.

(ii) Any gift, transfer, purchase, or condemnation shall be subsequently subject to be approved and accepted by the state.

(D)(i) The funds required by this subdivision (c)(2) shall be established at such rate that interest on the sum of all funds reasonably anticipated as payable shall provide an annual amount equal to the anticipated reasonable costs necessary to maintain, monitor, and otherwise supervise and care for the lands and facilities as required in the interest of public health and safety.

(ii) In arriving at the rate of funds to be deposited, the State Radiation Control Agency shall consider the nature of the licensed material, size and type of activity, estimated future receipts, and estimated future expenses of maintenance, monitoring, and supervision.

(E)(i) Recognizing that ultimate responsibility to protect the public health and safety must be reposed in a solvent government, without regard to the existence of any particular agency or department, all lands, buildings, and grounds acquired by the state under subdivision (c)(2)(C) of this section shall be owned in fee simple absolute by the state for purposes stated in subdivision (c)(2)(C) of this section.

(ii) All radioactive material received at the site and located therein at time of acquisition of ownership by the state becomes the property of the state.

(F)(i) If a person licensed by any governmental agency other than the State of Arkansas desires to transfer a site to the state for the purpose of administering or providing long-term care, a lump-sum deposit shall be made to a trust fund.

(ii) The amount of the deposit shall be determined by the secretary, taking into consideration the factors stated in subdivision (c)(2)(D) of this section.

(3) The sureties or other financial arrangements and funds required by subdivisions (c)(1) and (2) of this section shall be established in amounts sufficient to ensure compliance with those standards, if any, established by the United States Nuclear Regulatory Commission pertaining to closure, decommissioning, reclamation, and long-term site surveillance and care of such facilities and sites.

(4) All state, local, or other governmental agencies or subdivisions shall be exempt from the requirements of subdivisions (c)(1) and (2) of this section.

(5) The State Radiation Control Agency may by contract, agreement, lease, or license with any person, including another state agency, provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this subsection as needed to carry out the purposes of this section.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, § 4; 1969, No. 115, § 1; 1975, No. 382, § 1; 1983, No. 19, §§ 4 [4A], 5; A.S.A. 1947, § 82-1515; Acts 2017, No. 707, § 61; 2019, No. 910, §§ 5020-5023; 2021, No. 268, § 3.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in the first sentence of (10)(A); and substituted "secretary" for "director" throughout (10) and (11).

The 2021 amendment added the (a) designation; substituted "radioactive material" for "by-product, source, and special nuclear materials" in (a)(2); added the second sentence in (a)(4); inserted "or registration" in (a)(8)(A); inserted "general license" in (a)(8)(B); redesignated (9)(A) and (B) as (b)(1) and (2); added (b)(3); redesignated and rewrote former (10) and (11) as (c)(1) and (c)(2); added (c)(3)-(5); and updated internal references and made stylistic changes.

## 20-21-209. State Radiation Control Agency — Recognition of other licenses or registrations.

Rules promulgated pursuant to this subchapter may provide for recognition of other state or federal licenses or registrations, or equivalents, as the State Radiation Control Agency may deem desirable, subject to such licensing or registration requirements as the agency may prescribe.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, § 4; 1969, No. 115, § 1; 1975, No. 382, § 1; 1983, No. 19, §§ 4 [4A], 5; A.S.A. 1947, § 82-1515; Acts 2019, No. 315, § 2017; 2021, No. 268, § 4.

**Amendments.** The 2019 amendment deleted "and regulations" following "Rules".

The 2021 amendment added "or registrations" in the section heading; and inserted "or registrations, or equivalents" and substituted "licensing or registration requirements" for "registration".

## 20-21-212. License or registration required.

It shall be unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of ionizing radiation unless licensed by or registered with the State Radiation Control Agency in conformance with rules promulgated in accordance with this subchapter.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, § 12; 1983, No. 19, § 9; A.S.A. 1947, § 82-1523; Acts 2019, No. 315, § 2018.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules".

## 20-21-213. Licensing and registration requirements generally.

(a) The State Radiation Control Agency shall provide by rule for licensing of radioactive material, or devices or equipment utilizing such material, and for licensing or registration of radiation equipment.

(b) The rule shall provide for amendment, suspension, or revocation of licenses and registrations.

(c) The rule shall provide that:

(1) Each application for a specific license, or license or registration of radiation equipment, shall be in writing and shall state such information as the agency by rule may determine to be necessary to decide the technical and financial qualifications or any other qualifications of the applicant as the agency may deem reasonable and necessary to protect the occupational and public health and safety;

(2) The agency may at any time after the filing of the application and before the expiration of the license or registration require further written statements and may make such inspections as the agency may deem necessary in order to determine whether the license or registration should be granted or denied or whether the license or registration should be modified, suspended, or revoked;

(3) All applications and statements shall be signed by the applicant, licensee, or registrant;

(4) The agency may require any applications or statements to be made under oath or affirmation;

(5) Each license or registration shall be in a form and contain terms and conditions as the agency may by rule prescribe;

(6) No license or registration issued under this subchapter nor any right under a license or registration shall be transferred, assigned, or in any manner disposed of unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of this subchapter and shall give its consent in writing;

(7) The terms and conditions of all licenses or registrations shall be subject to amendment, revision, or modification by rules or orders issued in accordance with this subchapter;

(8) Licenses issued by the agency shall:

(A) Be renewed every five (5) to ten (10) years based on risk factors as determined by the agency; and

(B) Expire at a time specified by the agency; and

(9) Registrations issued shall:

(A) Be renewed at a time specified by the agency; and

(B) Expire one (1) year after issuance or at a time specified by the agency.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, § 5; 1983, No. 19, § 6; A.S.A. 1947, § 82-1516; Acts 1995, No. 796, § 2; 2003, No. 1119, §§ 1-3; 2019, No. 315, § 2019; 2021, No. 268, § 5.

**Amendments.** The 2019 amendment deleted "or regulation" following "rule" throughout the section and deleted "regulations" following "rules" in (c)(7).

The 2021 amendment rewrote (a); added "and registrations" in (b); in (c)(1), inserted "or license or registration of radiation equipment" and deleted "insurance" following "technical"; throughout (c)(2) and in (c)(5), inserted "or registration"; added "or registrant" in (c)(3); rewrote (c)(6); inserted "or registrations" in (c)(7); in (c)(8) and (9), deleted former (A) and redesignated former (B) and (C) as (A) and (B); and made stylistic changes.

## 20-21-215. Licensing and registration requirements — Recognition of other licenses or registrations.

Rules promulgated pursuant to this subchapter may provide for recognition of other state or federal licenses or registrations, or equivalents, as the State Radiation Control Agency may deem desirable, subject to such licensing or registration requirements as the agency may prescribe.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, § 5; 1983, No. 19, § 6; A.S.A. 1947, § 82-1516; Acts 2019, No. 315, § 2020; 2021, No. 268, § 6.

**Amendments.** The 2019 amendment deleted "and regulations" following "Rules".

The 2021 amendment added "or registrations" in the section heading; inserted "or registrations, or equivalents" and "licensing or"; and substituted "may deem" for "shall deem".

## 20-21-216. [Repealed.]

**Publisher Note.** This section, concerning licensing and registration requirements and termination, was repealed by Acts 2021, No. 268, § 6, effective July 28, 2021. The section was derived from Acts 1961 (2nd Ex. Sess.), No. 8, § 5; 1983, No. 19, § 6; A.S.A. 1947, § 82-1516; Acts 2019, No. 315, § 2021.

## 20-21-217. Licensing and registration requirements — Compliance with standards — Fees.

(a) Until the State Board of Health promulgates rules under subsection (c) of this section, the State Radiation Control Agency may charge and collect the following annual fees associated with licensing and registration of sources of ionizing radiation:

(1) Hospitals or medical centers:

(A) Category I-A ..... $900.00
(B) Category I-B ..... 700.00
(C) Category II-A ..... 650.00
(D) Category II-B ..... 450.00
(E) Category III ..... 200.00

(2) Radioactive material licenses:

(A) Private practice, other than teletherapy units or particle accelerators ..... $100.00
(B) Radiography:
(i) In plant ..... 350.00 for first bay
..... 500.00 for 2 or more bays
(ii) Field ..... 1,000.00
(C) Wireline service operation ..... 300.00 for 1 to 3 sources
..... 500.00 for 4 or more sources
(D) Academic:
(i) Broad ..... 500.00
(ii) Other ..... 200.00
(E) Gas chromatograph devices and lead analyzers ..... 100.00
(F) Nuclear gauges ..... 300.00 for 1 to 5 gauges
..... 500.00 for 6 or more gauges
(G) Particle accelerators, nonmedical ..... 200.00
(H) In vitro laboratory testing ..... 25.00
(I) Irradiators ..... 1,000.00
(J) Nuclear pharmacy ..... 1,000.00
(K) Mobile nuclear medicine service ..... 1,200.00
(L) Consultants ..... 250.00

(3) General licensed devices: Initial registration and annual fees for the receipt, possession, or use of radioactive material under a general license or a license obtained through reciprocity, as defined by the State Radiation Control Agency, shall be as follows:

(A) Certain measuring, gauging, and controlling devices ..... $300.00
(B) Generally licensed gas chromatographs ..... 200.00
(C) Static elimination devices ..... 100.00

(D) Source material devices ..... 500.00
(E) Devices containing depleted uranium ..... 500.00
(F) Public safety devices containing radioactive material .. 50.00
(G) All other general license registrations other than those specified above ..... 150.00
(4) Other:
(A) Medical, therapy, nonhospital unit ..... $250.00 for first unit
..... 175.00 for each additional unit
(B) Particle accelerator, medical, nonhospital unit
..... 450.00 for first unit
..... 300.00 for each additional unit
(C) State Board of Health Rules for Control of Sources of Ionizing Radiation ..... 0.00 for first copy
..... 30.00 for each additional copy
(D) Naturally occurring radioactive material license .... 2,500.00
(E) Amendment to existing license ..... 50.00 per amendment
(5) Reciprocity:
(A) Naturally occurring radioactive material ..... $2,500.00
(B) Radiography, field ..... 1,000.00
(C) Wireline ..... 500.00
(D) Nuclear gauge ..... 500.00
(E) Consultant ..... 100.00
(6) Late fees: A late fee equal to ten percent (10%) of the applicable fee shall be charged for fees not received within sixty (60) days of the invoiced due date and for every sixty (60) days thereafter.

(b) The State Radiation Control Agency may charge and collect the following annual fees associated with X-ray registrations:

(1) All X-ray units, sixty-five dollars ($65.00) per tube up to a maximum of two hundred sixty dollars ($260); and

(2) Vendor services providing radiation equipment services or radiation safety services, or both, sixty-five dollars ($65.00).

(c)(1) For the fees under subsection (a) of this section, the board shall adopt rules to establish fees at a level to sustain operations of the State Radiation Control Agency's mandated programs.

(2) The fees shall not:

(A) Conflict with federal program schedules; or

(B) Exceed twenty-five percent (25%) of the fees that would be levied by the United States Nuclear Regulatory Commission if the United States Nuclear Regulatory Commission were to regulate the State Radiation Control Agency's mandated programs.

(d) Each application for reciprocal recognition of an out-of-state license or of an out-of-state registration shall be accompanied by the applicable annual fee, provided that no fee has been submitted during the calendar year of the application.

(e)(1) The annual fee shall be based upon the calendar year, January 1 through December 31, with fees for any given year due by December 31 of the previous year.

(2)(A) Applications for new licenses or registrations shall be accompanied by the appropriate fees.

(B) An applicant shall be charged for a full calendar year regardless of the month the license or registration is issued.

(3) Applications for amendments to licenses or registration certificates which result in a change to a more costly category shall be accompanied by a fee equal to the difference between the fee for the current category and the one to which the amended license or certificate will escalate.

(4) Fee payments shall be by check, draft, or money order made payable to the Department of Health.

(5) In any case in which the State Radiation Control Agency finds that an applicant for a new license or new certificate of registration has failed to pay the fee prescribed in this section, the State Radiation Control Agency shall not process that application until the fee is paid.

(6) In any case in which the State Radiation Control Agency finds that a person has failed to pay a fee prescribed by this section within ninety (90) days of the date due, the State Radiation Control Agency may issue an order to show cause why that registration, license, or other service should not be revoked, suspended, or terminated, as appropriate.

(f) Annual fees shall not be required for those applicants, licensees, registrants, or other applicable persons whose use of sources of radiation is certified as financed solely by the General Revenue Fund Account of the State Apportionment Fund.

(g) All fees levied and collected under this section are declared to be special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund.

(h) Subject to the rules as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the department may transfer all unexpended funds relative to licensing and registration for use of radioactive materials and X-ray equipment that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, § 5; 1983, No. 19, § 6; A.S.A. 1947, § 82-1516; Acts 1987, No. 504, § 2; 1995, No. 796, § 3; 2003, No. 1119, §§ 4-6; 2005, No. 929, § 1; 2011, No. 596, § 1; 2019, No. 315, § 2022; 2021, No. 268, § 6.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (i).

The 2021 amendment deleted former (a) and redesignated the remaining subsections accordingly; updated internal references; and made stylistic changes.

## 20-21-218. Records.

(a)(1) The State Radiation Control Agency shall require each person who manufactures, possesses, distributes, sells, installs, repairs, or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the agency may require subject to such exemptions as may be provided by rule.

(2) The agency shall require each person who manufactures, possesses, distributes, sells, installs, repairs, or uses a source of ionizing radiation, or who furnishes personnel dosimetry services for agency licensees or registrants to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules of the agency.

(b)(1) Copies of all records required by subsection (a) of this section shall be submitted to the agency upon request. The agency shall obtain these required records from each person who manufactures, possesses, distributes, sells, installs, repairs, or uses a source of ionizing radiation and from service personnel.

(2) To each employee for whom personnel monitoring is required, a copy of the employee's personal exposure record shall be given at the frequency required by rule.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, § 7; 1983, No. 19, § 7; 1985, No. 554, § 1; A.S.A. 1947, § 82-1518; Acts 2019, No. 315, § 2023; 2021, No. 268, § 6.

**Amendments.** The 2019 amendment substituted "rule" for "rules and regulations" in (a)(1); and deleted "and regulations" following "rules" in (a)(2).

The 2021 amendment rewrote (b)(2).

## 20-21-219. Storage of radioactive wastes.

(a) The operation or administration of any sites acquired under this subchapter for the concentration and storage of radioactive wastes and by-products shall be under the direct supervision of the State Radiation Control Agency and shall be in accordance with the rules promulgated and enforced by that agency to protect the public health and safety.

(b) The agency may lease or license such lands, buildings, and grounds as it may acquire under this subchapter for the purpose of operating sites for the concentration and storage of radioactive wastes and by-products.

(c) The State Board of Health may enter into contracts as may be necessary for carrying out the provisions of this subchapter.

(d)(1) To finance the custody, control, and maintenance of such sites as the agency may undertake, the agency may collect fees from private or public parties holding radioactive material for custodial purposes. The fees shall be sufficient in each individual case to defray the estimated cost of the agency's custodial management activities for that individual case.

(2) All fees shall be placed in a special account, in the nature of a revolving trust fund and which may be designated the "Perpetual Maintenance Fund".

(3) The fees shall be received, disbursed, and accounted for by using generally accepted accounting principles.

(4) Moneys in the fund may be invested in United States bonds and treasury bills or in such other securities as may be approved by the agency and the Treasurer of State.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, §§ 17, 18, as added by Acts 1969, No. 115, § 2; A.S.A. 1947, §§ 82-1526, 82-1527; Acts 2019, No. 315, § 2024.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (a).

**20-21-222. Administrative proceedings.**

(a) Under this subchapter:

(1) In any proceeding for the issuance or modification of rules relating to control of sources of ionizing radiation, the State Radiation Control Agency shall provide an opportunity for public participation through written comments or a public hearing, or both;

(2) In any proceeding for the denial of an application for a license or registration or for revocation, suspension, or modification of a license or registration, the agency shall provide to the applicant, licensee, or registrant an opportunity for a hearing on the record;

(3) In any proceeding for licensing commercial burial of radioactive waste, the agency shall provide:

(A) An opportunity, after public notice, for written comments and a public hearing with a transcript;

(B) An opportunity for cross examination; and

(C) A written determination of the action to be taken that is based upon findings included in the determination and upon evidence presented during the public comment period;

(4)(A) In any proceeding for licensing commercial burial of radioactive waste, the agency shall prepare for each licensed activity that has a significant impact on the human environment a written analysis of the impact of the activity on the environment.

(B) The environmental impact analysis shall be available to the public before the commencement of hearings held pursuant to subdivision (a)(3) of this section and shall include:

(i) An assessment of the radiological and nonradiological impacts to the public health;

(ii) An assessment of any impact on any waterway and groundwater;

(iii) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted; and

(iv) Consideration of the long-term impacts including decommissioning, decontamination, and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after the decommissioning, decontamination, and reclamation; and

(5) The agency shall prohibit any major construction with respect to any activity for which an environmental impact analysis is required by subdivision (a)(4) of this section before completion of such analysis.

(b)(1) Whenever the agency finds that an emergency exists requiring immediate action to protect the public health and safety, the agency may without notice or hearing issue a rule or order reciting the existence of the emergency and requiring that the action be taken as is necessary to meet the emergency.

(2) Notwithstanding any provision of this subchapter, the rule or order shall be effective immediately.

(3) Any person to whom the rule or order is directed shall comply with the rule or order immediately but, on application to the agency, shall be afforded a hearing within ten (10) days.

(4) On the basis of the hearing, the emergency rule or order shall be continued, modified, or revoked within thirty (30) days after the hearing.

(c) Any final order entered in any proceeding under this section may be appealed to the Pulaski County Circuit Court within twenty (20) days from the date of issuance of the order.

**History.** Acts 1961 (2nd Ex. Sess.), No. 8, § 10; 1983, No. 19, § 8; A.S.A. 1947, § 82-1521; Acts 2019, No. 315, §§ 2025, 2026; 2021, No. 268, § 7.

**Amendments.** The 2019 amendment deleted "or regulations" following "rules" in (a)(1); and substituted "rule" for "regulation" and "regulations" throughout (b).

The 2021 amendment, in (a)(2), inserted "or registration" twice and "or registrant"; deleted "licensing ores processed primarily for their source material content or disposal of radioactive material or for" following "In any proceeding for" in the introductory language of (a)(3); redesignated (a)(4) as (a)(4)(A) and (B); rewrote (a)(4)(A); and made stylistic changes.

## Subchapter 3 — Electronic Products



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-21-304. Penalties.

(a) Any person that willfully violates any of the provisions of this subchapter or rules or orders in effect pursuant to this subchapter of

the State Electronic Product Control Agency shall upon conviction be punished by a fine of not less than one hundred dollars ($100) nor more than two thousand dollars ($2,000) or by imprisonment for not more than six (6) months, or by both fine and imprisonment.

(b) Each day of violation shall be considered a separate offense and shall be punishable as such.

**History.** Acts 1969, No. 460, § 13; A.S.A. 1947, § 82-1540; Acts 2019, No. 315, § 2027.

**Amendments.** The 2019 amendment deleted "regulations" following "rules" in (a).

## 20-21-305. Enforcement.

(a) The State Electronic Product Control Agency or its authorized representatives shall have the power to enter at all reasonable times upon any private or public property on or in which electronic products are being manufactured, distributed, used, or repaired for the purpose of determining whether or not there is compliance with or violation of this subchapter and rules issued under this subchapter. However, entry into areas under the jurisdiction of the United States Government shall be effected only with the concurrence of the United States Government or its designated representative.

(b) In the event of an emergency, the agency shall have the authority to impound or order the impounding of electronic products in the possession of any person who is not equipped to observe or fails to observe the provisions of this subchapter or any rules issued under this subchapter.

(c) Whenever in the judgment of the agency any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this subchapter or any rule or order issued under this subchapter, then at the request of the agency, the Attorney General may make application to a court of competent jurisdiction for an order enjoining those acts or practices, or for an order directing compliance and, upon a showing by the agency that the person has engaged in or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

**History.** Acts 1969, No. 460, §§ 6, 10, 12; A.S.A. 1947, §§ 82-1533, 82-1537, 82-1539; Acts 2019, No. 315, § 2028.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in the first sentence of (a); deleted "or regulations" following "rules" in (b); and deleted "regulation" following "rule" in (c).

## 20-21-306. State Electronic Product Control Agency.

(a) The State Board of Health is designated as the State Electronic Product Control Agency.

(b) The Secretary of the Department of Health shall be Director of the State Electronic Product Control Agency and shall perform the functions vested in the agency pursuant to this subchapter.

(c) In accordance with the laws of the State of Arkansas, the agency may employ, compensate, and prescribe the powers and duties of such individuals as may be necessary to carry out this subchapter.

(d) For the protection of the occupational and public health and safety, the agency shall:

(1) Develop such programs as the agency determines are necessary for the evaluation and control of radiation hazards associated with the use of electronic products;

(2) Develop programs and formulate, adopt, promulgate, and repeal codes and rules with due regard for compatibility with federal programs for licensing and regulation of certain electronic products and radiation therefrom;

(3) Issue such orders, or modifications thereof, and conduct such hearing proceedings as may be necessary under this subchapter;

(4) Advise, consult, and cooperate with other governmental agencies and with other groups concerned with the control of radiation from electronic products;

(5) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the United States Government or from other sources, public or private;

(6) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of radiation from electronic products; and

(7) Collect and disseminate information relating to its functions, including:

(A) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(B) Maintenance of a file of registrants requiring registration under this subchapter and any administrative or judicial action pertaining to this subchapter; and

(C) Maintenance of a file of all rules relating to regulation of radiation from electronic products, pending or promulgated, and proceedings thereon.

**History.** Acts 1969, No. 460, § 4; A.S.A. 1947, § 82-1531; Acts 2019, No. 315, §§ 2029, 2030; 2019, No. 910, § 5024.

**Amendments.** The 2019 amendment by No. 315 substituted "repeal codes and rules" for "repeal codes, rules, and regulations" in (d)(2); and deleted "and regulations" following "rules" in (d)(7)(C).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (b).

## 20-21-307. License or registration required.

It shall be unlawful for any person to use, manufacture, distribute, install, repair, acquire, own, or possess an electronic product except in conformance with rules for licensing or registration for that product, if any, promulgated in accordance with this subchapter.

**History.** Acts 1969, No. 460, § 11; A.S.A. 1947, § 82-1538; Acts 2019, No. 315, § 2031.

**Amendments.** The 2019 amendment substituted "rules" for "regulations".

## 20-21-308. Licensing and registration — Regulation by State Electronic Product Control Agency.

(a) The State Electronic Product Control Agency may:

(1) Require registration or licensing for the manufacture, distribution, installation, repair, and use of electronic products or component parts of such products and for which rules have been promulgated as specified in § 20-21-306(d)(2); and

(2) Exempt certain electronic products from the licensing or registration requirements set forth in this section when the agency makes a determination that the exemption of the electronic products or kinds of uses or users of the products will not constitute a significant risk to the health and safety of the public.

(b) Rules promulgated pursuant to this subchapter may provide for recognition of other state or federal licenses as the agency may deem desirable, subject to such registration requirements as the agency may prescribe.

**History.** Acts 1969, No. 460, § 5; A.S.A. 1947, § 82-1532; Acts 2019, No. 315, §§ 2032, 2033.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (a)(1); and deleted "and regulations" following "Rules" in (b).

## 20-21-309. Records.

(a) Each person who manufactures, distributes, installs, repairs, or uses electronic products shall establish and maintain such records, make such reports, and provide such information as the State Electronic Product Control Agency may by rule reasonably require to enable the agency to determine the compliance of the person with this subchapter.

(b) Any report or information concerning trade secrets or secret industrial processes obtained under this subchapter shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the agency.

**History.** Acts 1969, No. 460, § 7; A.S.A. 1947, § 82-1534; Acts 2019, No. 315, § 2034.

**Amendments.** The 2019 amendment deleted "or regulation" following "rule" in (a).

## 20-21-312. Administrative proceedings.

(a) In any of the proceedings under this subchapter, the State Electronic Product Control Agency shall afford an opportunity for a hearing on the record upon the request of any person whose interest may be affected by the proceeding and shall admit the person as a party to the proceeding:

(1) For the issuance or modification of rules relating to radiation from electronic products;

(2) For granting, suspending, revoking, or amending any license; or

(3) For determining compliance with or granting exceptions from rules of the agency.

(b)(1) Whenever the agency finds that an emergency exists requiring immediate action to protect the public health and safety, the agency, without notice or hearing, may issue a rule or order reciting the existence of an emergency and requiring that such action be taken as is necessary to meet the emergency.

(2) Notwithstanding any provision of this subchapter, the rule or order shall be effective immediately.

(3) Any person to whom the rule or order is directed shall comply with the rule or order immediately but, on application to the agency within ten (10) days, shall be afforded a hearing within thirty (30) days.

(4) On the basis of the hearing, the emergency rule or order shall be continued, modified, or revoked within thirty (30) days after the hearing.

(c) Any final order entered in any proceeding under this section may be appealed to the Pulaski County Circuit Court within twenty (20) days from the date of receipt of the order.

**History.** Acts 1969, No. 460, § 9; A.S.A. 1947, § 82-1536; Acts 2019, No. 315, §§ 2035-2037.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (a)(1) and (a)(3); and substituted "rule" for "regulation" throughout (b).

## Subchapter 4 — Nuclear Planning and Response Program

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

### 20-21-403. Operating funds.

(a)(1) The Chief Fiscal Officer of the State shall annually determine the approximate amount of funds which will be necessary for the operation and maintenance of the Nuclear Planning and Response Program. This amount shall not be in excess of the total amounts appropriated for the program by the General Assembly for the particular year.

(2) The Secretary of the Department of Health shall certify the amount to each utility in the state which maintains and operates one (1) or more nuclear generating facilities in the state. The Chief Fiscal Officer of the State shall then notify each utility of the portion of the amount to be paid by each utility.

(b) The cost of maintaining and operating the program shall be apportioned to the utilities in this state operating nuclear generating facilities in such proportions as the Chief Fiscal Officer of the State shall determine to be most appropriate and equitable.

**History.** Acts 1980 (1st Ex. Sess.), No. 67, § 3; A.S.A. 1947, § 82-1543; Acts 2019, No. 910, § 5025.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a)(2).

### 20-21-404. Fees.

(a) There is levied and there shall be collected annually from each utility in this state which operates one (1) or more nuclear generating facilities a fee in such amount as shall be determined by the Chief Fiscal Officer of the State in the manner prescribed in this subchapter.

(b) The fees so levied against each utility shall be remitted by the utility to the Secretary of the Department of Health within thirty (30) days after the amount thereof is certified by the Chief Fiscal Officer of the State.

(c) If any utility shall fail or refuse to pay the fees as provided in this section within the time prescribed, the secretary shall add to the fee a penalty of twenty-five percent (25%) thereof and shall certify the amount of the delinquent fee and penalty to the Attorney General for collection.

**History.** Acts 1980 (1st Ex. Sess.), No. 67, § 4; A.S.A. 1947, § 82-1544; Acts 2019, No. 910, § 5026.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (b); and substituted "secretary" for "director" in (c).

## Subchapter 5 — Nuclear Planning and Response Grants

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-21-501. Definitions.

As used in this subchapter:

(1) "Chief executive officer" means the county judge of each county in this state;

(2) "Cooperative agreement" means the written instrument which sets forth the conditions to be met by each county in order to qualify for grant funds authorized by this subchapter;

(3) "Division of Health" means the Nuclear Planning and Response Program of the Division of Radiation Control and Emergency Management of the Department of Health, with the Secretary of the Department of Health having the ultimate authority over any activities conducted by that program, division, and department;

(4) "Failure to perform" means:

(A) Utilization of grant funds which is inconsistent with the terms of the cooperative agreement;

(B) Failure to demonstrate the capability to carry out the minimum responsibilities as defined in the cooperative agreement; or

(C) Failure to adhere to the conditions or requirements of the cooperative agreement;

(5) "Local government" means the cities, towns, municipalities, or other political subdivisions, or agencies thereof, located within a county in this state; and

(6) "Radiological response plan" means the specific operational procedures to be performed by the citizens of each county in the event of either an actual or a practice nuclear emergency.

**History.** Acts 1983, No. 536, § 1; A.S.A. 1947, § 82-1546; Acts 2019, No. 910, § 5027.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (3).

## 20-21-502. Administration.

(a) The Department of Health shall serve as the administering and disbursing agency for a program of issuing grants to those local governments located in such close proximity to nuclear-powered elec-

tricity generating facilities in this state that federal regulations or state rules require those local governments to maintain nuclear disaster response procedures and precautions.

(b) Grants shall be issued by the department to the county governments in the affected areas, and the chief executive officer of each county shall be the agent of the county in entering into any agreements with the department in order to receive funds. He or she shall also be the agent of the county in entering into agreements with officials of the local governments or their agencies within each county to disburse the funds.

**History.** Acts 1983, No. 536, § 2; A.S.A. 1947, § 82-1547; Acts 2019, No. 315, § 2038.

**Amendments.** The 2019 amendment substituted "federal regulations or state rules" for "federal or state regulations" in (a).

## 20-21-503. Cooperative agreements.

(a)(1) Before the award of a grant to a county for the purposes described in this subchapter, the Department of Health shall draw up a proposal for a cooperative agreement between the State of Arkansas and the eligible counties in this state.

(2) The proposal shall set forth the activities to be conducted by the county under its radiological response plan as a prerequisite for receipt of grant payments.

(3) The proposed cooperative agreement shall include:

(A) The responsibilities of the county as prescribed in the county's radiological response plan and the state emergency operations plan, as amended;

(B) The means by which the county will demonstrate that it can meet its designated responsibilities, as defined in subdivision (a)(3)(A) of this section, including, but not limited to, program audits, test exercises, or operational readiness evaluations;

(C) The methods of distribution of grant funds to local governments and their agencies to provide a fair opportunity for all political subdivisions within the county to benefit from grant funds;

(D) The intended use of grant funds as reflected in an annual budget to correspond with the state fiscal year; and

(E) Any other information determined by the department to be necessary to ensure compliance with state rules or federal regulations and to ensure that all expenditures of grant funds are in direct support of radiological emergency planning or response.

(b)(1) The department shall submit a proposal for a cooperative agreement to the chief executive officer of each county sixty (60) days before the beginning of the state fiscal year.

(2) The fully executed cooperative agreement shall be in effect by August 1 of the state fiscal year.

(3) A cooperative agreement is fully executed when it is duly signed by the Director of the Division of Radiation Control and Emergency Management of the Department of Health, as the representative of the

department, and the county judge as the chief executive officer of the county.

(c) Variances from any portion of the cooperative agreement shall be approved in writing by the director before implementation of the variance.

(d)(1) Failure to perform shall result in either suspension of funds for a specified period or complete revocation of the agreement. The specific penalty shall be determined following an assessment of the degree of seriousness imposed by the breach of agreement.

(2) The reinstatement of eligibility for a county so penalized shall occur only after satisfactory demonstration that the conditions or situations resulting in the penalty have been corrected.

(3) Written notice shall be given to the chief executive officer by the director citing the reason for the penalty and the steps necessary to regain agreement eligibility.

**History.** Acts 1983, No. 536, § 3; A.S.A. 1947, § 82-1548; Acts 2019, No. 315, § 2039.

**Amendments.** The 2019 amendment inserted "rules" in (a)(3)(E).

# CHAPTER 22

# FIRE PREVENTION, PROTECTION, AND SAFETY

SUBCHAPTER.



## Subchapter 1 — General Provisions

SECTION.



### 20-22-101. Firefighting foam — Definitions.

(a) As used in this section:

(1) "Class B firefighting foam" means foam designed for flammable liquid fires;

(2) "Foam training facility" means a facility:

(A) In which the discharge of foam is permitted in a nonemergency situation for the training of firefighters and the readiness of equipment; and

(B) That may have the capability to provide evaluation and calibration of equipment and foam;

(3) "Local government" means a municipality, county, fire district, regional fire protection authority, or other public entity that provides firefighting service;

(4) "PFAS chemical" means:

(A) Perfluoroalkyl and polyfluoroalkyl substances; and

(B) For the purpose of firefighting agents, a class of fluorinated organic chemicals containing at least one (1) fully fluorinated carbon atom and designed to be fully functional in class B firefighting foam;

(5) "Testing" means calibration testing, conformance testing, and fixed system testing; and

(6) "Testing facility" means a facility:

(A) In which the discharge of foam is permitted in a nonemergency situation for evaluation and calibration of firefighting equipment and foam; and

(B) That may have the capability to provide training of firefighters.

(b) Beginning January 1, 2022, a person, local government, or state agency shall not discharge class B firefighting foam that contains intentionally added PFAS chemicals for training purposes in a foam training facility.

(c) Beginning January 1, 2022, a person, local government, or state agency shall not discharge class B firefighting foam that contains intentionally added PFAS chemicals for testing purposes in a testing facility, unless otherwise required by law or ordinance and the testing facility has implemented appropriate containment, treatment, and disposal measures to prevent release into the environment.

(d) This section does not affect:

(1) The manufacture, sale, or distribution of class B firefighting foam that contains intentionally added PFAS chemicals; or

(2) The discharge or other use of class B firefighting foam that contains intentionally added PFAS chemicals in emergency firefighting or fire prevention operations.

(e) For the purposes of firefighting training:

(1) Nonfluorinated training foams or other nonfluorinated surrogates shall be used; and

(2) Training shall be conducted under conditions conducive to the collection of spent foam.

**History.** Acts 2021, No. 315, § 1.

## 20-22-102. Critical incident debriefing — Definition.

(a) As used in this section, "critical incident" means an event that has a stressful impact sufficient to overwhelm a person's usually effective coping skills, including an event that falls outside the range of ordinary human experience.

(b) A local government that maintains a fire department shall adopt a policy that:

(1) Shall make available to a firefighter who has been involved in a critical incident the opportunity to participate in a debriefing by a

mental health professional or a certified peer support member as defined under § 16-40-106; and

(2) Shall require the fire department to assist a firefighter who has been involved in a critical incident in obtaining additional services that may assist the firefighter in recovering from psychological effects resulting from the critical incident.

**History.** Acts 2021, No. 921, § 1.

## Subchapter 2 — State Fire Prevention Commission



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-22-203. Staff, offices, and supplies provided.

The Department of Public Safety shall provide staff, office space and supplies, and other assistance as may be necessary for the day-to-day operation of the State Fire Prevention Commission and its activities.

**History.** Acts 1979, No. 852, § 7; A.S.A. 1947, § 19-2171; Acts 2019, No. 910, § 6005.

**Amendments.** The 2019 amendment substituted "Department of Public Safety" for "State Fire Marshal's Office".

### 20-22-204. Powers and duties.

(a) The State Fire Prevention Commission may:

(1)(A) Obtain all necessary information from fire departments, police or sheriffs' departments, the Division of Arkansas State Police, other state agencies, clinics, insurance companies, or any other person with regard to fire, its causes, and its methods of prevention.

(B)(i) Notwithstanding any provision of law to the contrary, information furnished under this subsection shall be confidential and maintained as such if so requested by the persons providing the information.

(ii) Nothing in this subsection shall prohibit the use of confidential information to prepare statistics or other general data when it is presented so as to prevent identification of the source of information; and

(2) Receive and expend funds obtained from the United States Government or other sources by means of contracts, grants, awards, gifts, and other devices in support of fire prevention-related scientific and technical programs, studies, or other operations beneficial to the state.

(b) The State Fire Prevention Commission shall have the following duties and responsibilities:

(1) Develop a plan for statewide fire prevention, including plans for urban and rural fire prevention;

(2) Develop and maintain a fire prevention database upon which decisions concerning fire prevention and policy may intelligently be made;

(3) Identify state needs relative to fire prevention, including specific needs of urban and rural areas;

(4) Recommend actions to meet identified state needs relative to fire prevention;

(5) Monitor and review the effectiveness of existing and proposed fire prevention programs;

(6) Maintain an awareness of fire prevention research and development of importance to the state in order to promote information exchange and coordination of efforts;

(7) Recommend legislative and executive action to encourage development of fire prevention resources and the efficient utilization of the resources;

(8) Administer a public fire prevention awareness program to inform the public of the importance and methods of fire prevention;

(9) Advise the General Assembly, the Governor, the State Fire Marshal, the Arkansas Forestry Commission, the Director of the Arkansas Fire Training Academy, the Director of the Division of Arkansas State Police, and the Insurance Commissioner on fire prevention and program matters of importance to each;

(10) Advise on the delegation of responsibilities to state agencies responsible for fire prevention and policy and recommend resolution of conflicts between the various agencies on fire prevention matters;

(11) Develop an annual report on the activities of the State Fire Prevention Commission and transmit the report to the Secretary of the Department of Public Safety and the General Assembly on or before November 30 annually; and

(12) Coordinate activities with the Federal Emergency Management Agency and any of the other federal or state agencies involved with fire prevention matters.

**History.** Acts 1979, No. 852, §§ 2, 3; A.S.A. 1947, §§ 19-2166, 19-2167; Acts 2019, No. 910, § 6006.

**Amendments.** The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a)(1)(A) and in (b)(9); substituted "State Fire Prevention Commission" for "commission" in the introductory language of (b); and substituted "Secretary of the Department of Public Safety" for "Governor" in (b)(11).

## Subchapter 4 — Long-Term Care Facilities

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-22-404. Rules adopted by Office of Long-Term Care.

The Office of Long-Term Care of the appropriate division as determined by the Secretary of the Department of Human Services may adopt appropriate rules to carry out the purpose and intent of this subchapter.

**History.** Acts 1979, No. 374, § 3; A.S.A. 1947, § 82-849; Acts 2019, No. 315, § 2040; 2019, No. 910, § 5190.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "Rules" in the section heading; and deleted "and regulations" following "rules" in the text.

The 2019 amendment by No. 910 substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services".

## Subchapter 5 — Multiple-Occupancy Facilities

SECTION.

## 20-22-503. Enforcement of fire, police, and safety rules by employee.

(a) Every person operating any hotel, motel, apartment building, or other similar multiple-occupancy facility shall employ one (1) or more persons who shall be on duty on the premises, when they are occupied, from 6:00 p.m. until 8:00 a.m. seven (7) days a week.

(b) It shall be the duty of the persons to enforce all fire, police, and safety rules and to prevent entry to the premises by unauthorized persons or, if the unauthorized entry cannot be prevented, to report it to proper authorities.

**History.** Acts 1971, No. 239, § 5; A.S.A. 1947, § 82-829; Acts 2019, No. 315, § 2041.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (b).

### Subchapter 6 — Fire Extinguishers

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-22-605. Report and investigation of violations.

(a) The Division of Occupational and Professional Licensing Boards and Commissions and other state and local agencies and officers may cooperate with and assist the Arkansas Fire Protection Licensing Board in administering and enforcing this subchapter by reporting to the board any violations of this subchapter or any failure to comply with this subchapter or the policies adopted by the board pursuant to the authority granted in this subchapter.

(b) When any violation of this subchapter or of any policy of the board adopted pursuant to this subchapter is discovered by or reported

to the board, the board shall investigate the violation and take appropriate action.

**History.** Acts 1977, No. 743, § 13; A.S.A. 1947, § 82-844; Acts 2019, No. 910, § 5449.

**Amendments.** The 2019 amendment substituted "Division of Occupational and Professional Licensing Boards and Commissions" for "Department of Labor" in (a).

## 20-22-606. Arkansas Fire Protection Licensing Board — Creation — Members.

(a)(1) There is created the Arkansas Fire Protection Licensing Board, which shall be composed of eleven (11) members who are residents of the state and who shall be appointed by the Governor for terms of five (5) years. The eleven (11) members shall be constituted as follows:

(A) One (1) member shall be an industrial safety representative;

(B) One (1) member shall be the State Fire Marshal;

(C) One (1) member shall be a representative of a state association of fire chiefs;

(D) One (1) member shall be a representative of the fire insurance industry;

(E) Two (2) members shall be representatives of large industrial users of fire suppression equipment;

(F) One (1) member shall be a representative of a restaurant association;

(G) Two (2) members shall be active in the installation and servicing of portable fire extinguishers or fixed fire protection systems; and

(H) Two (2) members shall be active in the installation and servicing of fire protection sprinkler systems.

(2) Each of the four (4) congressional districts in the state shall be represented by at least one (1) member.

(3) Each of the members shall be experienced and knowledgeable in one (1) or more of the following areas:

(A) The installation or servicing of:

(i) Portable fire extinguishers;

(ii) Fixed fire protection systems; and

(iii) Fire protection sprinkler systems;

(B) The manufacturing of fire suppression equipment;

(C) The fire insurance industry;

(D) The use of fire suppression equipment by the food service industry; or

(E) The provision of fire suppression services by a fire department.

(b) Each member may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(c)(1) The board may expend moneys as necessary to reimburse the Department of Labor and Licensing for stationery, office supplies, application forms, equipment, and other materials necessary for the board to carry out its duties.

(2) The expense reimbursement and stipends authorized by § 25-16-901 et seq. and the expense for necessary office supplies, forms, equipment, and other necessary materials shall be paid from the fees and fines collected by the board.

(d)(1) The board shall employ an executive director, chief board investigator, and other staff as necessary whose compensation shall be set by the board.

(2) The staff shall be paid from fees and fines collected by the board.

**History.** Acts 1977, No. 743, §§ 3, 6; 1979, No. 543, § 1; 1983, No. 660, § 1; 1983, No. 782, § 6; 1985, No. 702, § 3; A.S.A. 1947, §§ 82-834 — 82-834.3, 82-837; Acts 1991, No. 392, § 3; 1993, No. 1215, § 4; 1997, No. 250, § 194; 2009, No. 422, § 5; 2019, No. 910, § 5450.

**Amendments.** The 2019 amendment inserted "to reimburse the Department of Labor and Licensing" in (c)(1).

## Subchapter 7 — Fireworks



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-22-701. Definitions.

As used in this subchapter:

(1) "Distributor" means any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or a retailer, or both;

(2) "I.C.C. Class C common fireworks" means all articles of fireworks classified as "I.C.C. Class C common fireworks" as defined in § 20-22-708 and in the regulations of the United States Surface Transportation Board for the transportation of explosives and other dangerous articles;

(3) "Importer" means any person who imports, brings in, or causes to be brought in any fireworks from outside the geographical limits of the State of Arkansas into this state;

(4) "Jobber" means any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail. "Wholesaler" shall have the same meaning as "jobber";

(5) "License" means the written authority of the Director of the Division of Arkansas State Police issued under the authority of this subchapter to a distributor, jobber, wholesaler, manufacturer, importer, or retailer for a fee as provided in § 20-22-707;

(6) "Manufacturer" means any person engaged in the making or construction of fireworks in the State of Arkansas or any person engaged in the making or construction of fireworks who ships or causes to be shipped, or transports or causes to be transported, any items of fireworks into the State of Arkansas;

(7) "Permit" means the written authority of the director issued for a public fireworks display under the authority of this subchapter;

(8) "Person" means any corporation, association, copartnership, or one (1) or more individuals;

(9) "Retailer" means any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than a distributor or jobber;

(10) "Sale" means barter, exchange, gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(11) "Shooter" means any person conducting any combination of fireworks, pyrotechnics, or special effects displays within the State of Arkansas; and

(12) "Special fireworks" means all articles of fireworks that are classified as Class B explosives in the regulations of the United States Surface Transportation Board and shall include all articles other than those classified as Class C but shall not include such dangerous items of commercial fireworks as cherry bombs, tubular salutes, repeating bombs, aerial bombs, torpedoes, and fireworks containing more than fifty milligrams (50mg) of explosive powder.

**History.** Acts 1961, No. 224, § 7; 1977, No. 379, § 1; A.S.A. 1947, § 82-1707; Acts 2005, No. 2204, § 1; 2019, No. 910, §§ 6007, 6008.

**Amendments.** The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (5) and (7).

## 20-22-702. Public displays excepted.

(a) Nothing in this subchapter shall be construed as applying to the shipping, sale, possession, and use of fireworks for public displays by holders of a permit for a public display to be conducted in accordance with the rules promulgated by the Director of the Division of Arkansas State Police. Such items of fireworks which are to be used for public

display only and which are otherwise prohibited for sale and use within the state shall include display shells designed to be fired from mortars and display set pieces of fireworks classified by the regulations of the United States Surface Transportation Board as Class B special fireworks and shall not include such items of commercial fireworks as cherry bombs, tubular salutes, repeating bombs, aerial bombs, and torpedoes.

(b)(1) Public displays shall be performed only under competent supervision and after the persons or organizations making the displays have applied for and received a permit for the displays issued by the director.

(2) Applications for permits for public displays shall be made in writing at least five (5) days in advance of the proposed display, and the application shall show that the proposed display is to be so located and supervised that it shall not be hazardous to life, limb, or property.

(3) If the display is to be performed within the limits of a municipality, the application shall so state and shall bear the signed approval of the chief supervisory officials of the fire and police departments of the municipality.

(c)(1) Permits issued shall be limited to the time specified therein and shall not be transferable.

(2) Only licensed distributors who are licensed importers or who purchase from licensed importers may possess special fireworks for resale to holders of a permit for a public fireworks display.

(d)(1) The Division of Arkansas State Police may charge a fee not to exceed fifty dollars ($50.00) for each permit issued under this section.

(2) The total fee for all permits issued during a school year to an educational institution that provides instruction for grades kindergarten through twelve (K-12) shall not exceed twenty-five dollars ($25.00).

(3) All permit fees shall be remitted to the division and shall be deposited into the State Treasury as special revenues to the credit of the Division of Arkansas State Police Fund.

**History.** Acts 1961, No. 224, § 6; 1985, No. 1040, § 1; A.S.A. 1947, § 82-1706; Acts 2005, No. 2204, § 2; 2009, No. 240, § 1; 2019, No. 315, § 2042; 2019, No. 910, §§ 6009-6011.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in the first sentenct of (a).

The 2019 amendment by No. 910 substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a) and throughout (d); inserted "United States" in (a); and substituted "division" for "department" in (d)(3).

## 20-22-703. Other exceptions.

(a)(1) Nothing in this subchapter shall be construed as applying to the:

(A) Manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation or of illuminating devices for photographic use;

(B) Military or naval forces of the United States or of this state or to peace officers;

(C) Sale or use of blank cartridges for ceremonial, theatrical, or athletic events; or

(D) Transportation, sale, or use of permissible fireworks as defined in § 20-22-708 or special fireworks as defined in § 20-22-701 solely for agricultural or industrial purposes, provided that the purchaser first secures a written permit to purchase and use the fireworks for agricultural or industrial purposes from the Director of the Division of Arkansas State Police.

(2) No permit for use of fireworks for agricultural purposes shall be issued by the director except after approval of the county agricultural agent of the county in which the fireworks are to be used.

(3)(A) All fireworks purchased under permit as authorized in this section for agricultural or industrial purposes shall at all times be kept in the possession of the permit holder.

(B) The permits and fireworks shall not be transferable.

(b) Any person holding a permit to purchase and use fireworks for agricultural or industrial purposes as provided in this section who shall sell, give away, or otherwise transfer the fireworks to another or shall use or permit the use of the fireworks for any purpose other than agricultural or industrial purposes as stated on the permit shall be in violation of this subchapter and subject to the penalties provided for in § 20-22-705.

**History.** Acts 1961, No. 224, § 9; 1963, No. 34, § 1; A.S.A. 1947, § 82-1709; Acts 2005, No. 1994, § 121; 2019, No. 910, § 6012.

**Amendments.** The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a)(1)(D).

## 20-22-707. License — Application and issuance.

(a)(1)(A) To be licensed as a manufacturer, importer, distributor, jobber, retailer, retailer all-year, or shooter of fireworks, a first-time applicant shall submit to the Director of the Division of Arkansas State Police an application on a form provided by the director setting forth the information that the director determines necessary to ensure public health, safety, and welfare.

(B) The license for a manufacturer, importer, distributor, jobber, retailer, or retailer all-year shall be effective from the date of issuance through the next April 30.

(C) The license for a shooter shall be valid for five (5) years from the date of issuance.

(D) Upon approval of the application by the director and before the issuance of the license, the applicant shall pay to the director a license fee for each type of business conducted based on the following schedule:

(i) Manufacturer ..... $1,000.00
(ii) Importer..... 750.00
(iii) Distributor..... 500.00

(iv) Jobber ..... 100.00
(v) Retailer ..... 25.00
(vi) Shooter ..... 50.00
(vii) Retailer All-Year ..... 500.00

(E) The fee for a shooter shall be waived if the applicant verifies that he or she is a professional or volunteer firefighter.

(2)(A) A retailer may purchase a license from its vendor if the vendor is a licensed importer, distributor, or jobber or from the State Fire Marshal Enforcement Section. The retailers' licenses shall be made available by the Division of Arkansas State Police to the vendor in books of twenty (20) licenses to a book.

(B) The vendor shall record the sales of the licenses to retailers and submit its records to the director semiannually on January 31 and July 31 of each year. Each semiannual report shall cover the preceding six-month period.

(3) A person that does not obtain a required license commits a violation of this subchapter.

(b)(1) A person may renew a license as a manufacturer, importer, distributor, jobber, retailer, or shooter by payment of the fee under subsection (a) of this section to the director.

(2) A license renewal application received by the director after May 1 of each year shall be assessed a late penalty in an amount equal to two (2) times the renewal fee, under subsection (a) of this section.

(c) All funds collected under this subchapter by the director, including license fees and penalties, shall be deposited into the State Treasury to the credit of the Division of Arkansas State Police Fund.

(d) The director shall assign a license number to each license issued. This number shall be affixed by the person to whom such a license is issued to all invoices issued or used by each manufacturer, importer, distributor, or jobber.

(e)(1) It shall be unlawful for a jobber licensed under this subchapter or for an Arkansas-domiciled retailer to purchase fireworks from a distributor, importer, or manufacturer domiciled outside the State of Arkansas unless the distributor, manufacturer, or importer can show proof that the distributor, manufacturer, or importer holds a valid license under this subchapter to perform functions of the distributor, importer, or manufacturer, or all of them, as the case may be.

(2) In the event of a violation of this section, if the distributor, importer, or manufacturer cannot show valid proof of being properly and currently licensed under this subchapter and if purchase of fireworks is consummated by a wholesale jobber licensed under this subchapter or by an Arkansas retailer from the distributor, importer, or manufacturer, then the jobber or retailer shall become liable, as a civil penalty, for the full amount of the license fee required by this subchapter from the distributor, importer, or manufacturer. The amount of the license fee is payable immediately, or in the event of failure to pay the penalty within thirty (30) days of the violation, the distributor, importer, or manufacturer shall be subject to the criminal penalties provided by this subchapter.

(3) Furthermore, unless the out-of-state distributor, importer, or manufacturer pays the license fee required under the provisions of this subchapter within a period of thirty (30) days after being so notified by registered mail, the person shall thereafter be prohibited from engaging in the business defined in this subchapter in the State of Arkansas.

(f)(1) No permit or license provided for in this subchapter shall be transferable, nor shall a person be permitted to operate under a permit or license issued to any other person.

(2) No permit or license shall be issued to a person under twenty-one (21) years of age.

(3)(A) Each retailer and holder of a license under the provisions of this subchapter shall keep an accurate record of each shipment received.

(B) Each distributor, importer, jobber, or wholesaler shall keep a record of each shipment received and each sale, delivery, or out-shipment of fireworks.

(C) The records shall be clear, legible, and accurate, showing the name and address of the seller or purchaser, item, and quantity received or sold.

(D) The records are to be kept at each place of business and shall be subject to examination by the director or his or her agents who shall have the authority at any time to require any manufacturer, importer, distributor, wholesaler, jobber, or retailer to produce records for the current year and the immediately preceding full license year.

(E) Each shooter shall keep a record of the date, location, and type of display conducted within the State of Arkansas.

(g) Mail-order sales of fireworks to consumers through any medium of interstate or intrastate commerce are prohibited. Sales of fireworks to consumers may be made only at properly licensed retail locations within the State of Arkansas. Any person violating this subsection shall be guilty of a Class C misdemeanor.

(h) The director may revoke or deny an application for any license or permit at any time for violating any provision of this subchapter or for falsifying any information provided to the division as part of an application for a license or permit.

(i) The director may promulgate rules necessary to enforce this subchapter.

**History.** Acts 1961, No. 224, § 8; 1977, No. 379, § 2; 1977, No. 504, §§ 1-4; 1985, No. 278, § 1; 1985, No. 1041, § 2; A.S.A. 1947, § 82-1708; Acts 1991, No. 677, § 1; 2005, No. 2204, § 4; 2009, No. 241, § 1; 2013, No. 1000, § 1; 2015, No. 28, § 1; 2017, No. 1093, § 2; 2019, No. 910, §§ 6013-6016.

**Amendments.** The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" throughout the section; and substituted "division" for "department" in (h).

### 20-22-710. Location, display, sale, etc.

(a) The placing, storing, locating, or displaying of fireworks in any window where the sun may shine through glass on to the fireworks so displayed or to permit the presence of lighted cigars, cigarettes, or pipes within ten feet (10') of where the fireworks are offered for sale is declared unlawful and prohibited.

(b) At all places where fireworks are stored or sold, there shall be posted signs with the words "FIREWORKS — NO SMOKING" in letters not less than four inches (4") high at each entrance to the retail sales area.

(c)(1) No fireworks are to be sold at retail at any location where paints, oils, or varnishes are kept for use or sale, unless the paints, oils, and varnishes are kept in the original unbroken containers, nor where resin, turpentine, gasoline, or other inflammable substance that may generate inflammable vapors is used, stored, or sold.

(2) Consumer fireworks retail sales facilities and stores shall not be located within fifty feet (50') of the following:

(A) Motor vehicle fuel dispensing station dispensers;

(B) Retail propane dispensing station dispensers;

(C) Above-ground storage tanks for flammable or combustible liquids;

(D) Flammable gases or flammable liquefied gases; or

(E) Compressed natural gas dispensing facilities.

(d) All firework devices that are readily accessible to handling by a consumer or purchaser shall have their fuses protected in such a manner as to protect against accidental ignition of an item by spark, cigarette ash, or other ignition source. Safety-type-thread wrapped and coated fuses are exempt from this section.

(e) All licensees under this subchapter shall have a fire extinguisher of a type approved by the Director of the Division of Arkansas State Police in an area readily accessible to any point of storage or sale of fireworks. In lieu of such an extinguisher, retailers may maintain a common type of water hose, charged and connected to a water system, which is readily available to any area where fireworks are stored or sold.

**History.** Acts 1961, No. 224, § 4; 1985, No. 1041, § 1; A.S.A. 1947, § 82-1704; Acts 2009, No. 239, § 1; 2019, No. 910, § 6017.

**Amendments.** The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in the first sentence of (e).

### 20-22-714. Seizure of contraband fireworks.

(a) The Director of the Division of Arkansas State Police shall seize as contraband any fireworks other than Class C common fireworks defined in § 20-22-708 or special fireworks for public displays as provided in § 20-22-702 or for agricultural or industrial purposes as provided in § 20-22-703, which are sold, displayed, used, or possessed in violation of this subchapter.

(b) The director may destroy fireworks so seized.

**History.** Acts 1961, No. 224, § 14; 1963, No. 34, § 2; A.S.A. 1947, § 82-1712; Acts 2019, No. 910, § 6018.

**Amendments.** The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a).

## 20-22-715. Notice of violation — Hearing.

(a) With reference to the administrative and civil penalties imposed by this subchapter, the Director of the Division of Arkansas State Police shall notify the person accused of a violation, setting a time and place for hearing to be held by the director or his or her designated agent.

(b) If the hearing results in a revocation or refusal to renew a license of or the imposition of any civil penalty upon that person, the person adjudged guilty of the violation shall have a right to appeal the decision, for a trial de novo, to the Pulaski County Circuit Court.

**History.** Acts 1961, No. 224, § 11; A.S.A. 1947, § 82-1711; Acts 2019, No. 910, § 6019.

**Amendments.** The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (a).

## Subchapter 8 — Fire Protection Services



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-22-802. Definitions.

As used in this subchapter:

(1) [Repealed.]

(2) "Certified fire department" means any fire department certified by the Director of the Office of Fire Protection Services as meeting minimum standards prescribed by the Arkansas Fire Protection Services Board;

(3) [Repealed.]

(4) "Fire department" means any organization established for the prevention or extinguishment of fires, including, but not limited to, fire departments organized under municipal or county ordinances, improvement districts, membership fee-based private fire departments, and volunteer fire departments; and

(5) "Firefighter" means any paid or volunteer member of a fire department who engages in fire suppressions, rescue, pump operations, or other fire-ground activities.

**History.** Acts 1987, No. 837, § 2; 2003, No. 1396, § 1; 2003, No. 1459, § 1; 2019, No. 389, §§ 39, 40.

**Amendments.** The 2019 amendment repealed (1) and (3).

## 20-22-803. Arkansas Fire Protection Services Board — Creation — Membership.

(a)(1) There is created the Arkansas Fire Protection Services Board.

(2) The board shall be composed of fifteen (15) members to be appointed by the Governor subject to confirmation by the Senate as follows:

(A)(i) Four (4) members shall be fire chiefs appointed by the Governor after consulting the Arkansas Association of Fire Chiefs.

(ii) Two (2) of the fire chiefs under this subdivision (a)(2)(A) shall be full paid fire chiefs, one (1) shall be a volunteer fire chief, and one (1) shall be a retired fire chief or a volunteer fire chief;

(B) Two (2) members shall be appointed after consulting the Arkansas Rural and Volunteer Firefighters Association;

(C) Four (4) members shall be appointed after consulting the Arkansas State Firefighters Association, all of whom shall be volunteer firefighters;

(D) Four (4) members shall be appointed by the Governor after consulting the Arkansas Professional Fire Fighters Association; and

(E) The State Forester of the Arkansas Forestry Commission or his or her designee.

(3) The Director of the Arkansas Fire Training Academy, the Director of the Division of Emergency Management or his or her designee, and the State Fire Marshal or his or her designee shall be ex officio members.

(4) Members shall serve three-year terms.

(5) Each member shall hold office until his or her successor is appointed and qualified.

(b)(1) The board shall elect annually a chair, vice chair, and secretary.

(2) The board shall meet at the call of the Chair of the Arkansas Fire Protection Services Board or a majority of the members.

(3) A majority of the members constitutes a quorum.

(c) The Governor shall fill vacancies occurring on the board with appointments for the duration of the unexpired terms.

(d) The members shall serve without pay but may receive expense reimbursement in accordance with § 25-16-901 et seq.

**History.** Acts 1987, No. 837, § 3; 1997, No. 250, § 195; 2003, No. 1459, § 2; 2013, No. 1256, § 1; 2015, No. 1100, § 50; 2019, No. 910, § 6020.

**Amendments.** The 2019 amendment substituted "Division of Emergency Management" for "Arkansas Department of Emergency Management" in (a)(3).

## 20-22-804. Arkansas Fire Protection Services Board — Duties and powers.

(a) The Arkansas Fire Protection Services Board shall:

(1) Prescribe by rule minimum standards for the certification of fire departments and standards for the classification of fire departments as to their level of service, including, but not limited to, standards for training levels for firefighters of fire departments, minimum levels of equipment, and minimum performance standards;

(2) Establish a system of identification for firefighters of certified fire departments for the purpose of assisting firefighters to carry out their duties;

(3) Assist fire departments with training programs and assist with the establishment and upgrading of fire departments;

(4) Promote the exchange of information among fire departments and state agencies;

(5) Serve in an advisory capacity to the Director of the Division of Emergency Management with respect to the operation of fire services and the matters concerning certification and standards related to fire services in the state;

(6) Periodically review and evaluate current and proposed national and international activities related to the improvement and upgrading of fire services to ensure that the state maintains acceptable standards of fire protection for its citizens and standards for training its firefighters;

(7) Advise the Director of the Arkansas Fire Training Academy in matters related to the training and certification of fire services personnel in Arkansas and curriculum and instructional content of the curriculum offered by the Arkansas Fire Training Academy;

(8)(A) Advise the President of Southern Arkansas University in matters regarding the appointment and retention of the Director of the Arkansas Fire Training Academy.

(B) The Arkansas Fire Protection Services Board shall review the applications for the position of Director of the Arkansas Fire Training Academy submitted to the president and recommend three (3) candidates for the position to the president.

(C) The president shall appoint the Director of the Arkansas Fire Training Academy from the three (3) recommended candidates; and

(9) Establish other reasonable rules as may be necessary for the purposes of this subchapter.

(b) As of March 1, 2003, the Arkansas Fire Training Academy Board created by § 12-13-202 [repealed] and the Arkansas Fire Advisory Board created by § 20-22-1005 [repealed] are transferred by a Type 3 transfer under § 25-2-106 to the Arkansas Fire Protection Services Board created by § 20-22-803.

(c)(1) The Arkansas Fire Protection Services Board may revoke the certification of any firefighter who has been convicted of a felony under § 17-3-102.

(2) Before the Arkansas Fire Protection Services Board revokes the certification of a firefighter under this subsection, the firefighter may request a hearing in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) If the Arkansas Fire Protection Services Board revokes the firefighter's certification under this subsection, the firefighter may appeal the Arkansas Fire Protection Services Board's decision to the Pulaski County Circuit Court in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) The Arkansas Fire Training Academy shall be the custodian of all records on the decertification of firefighters under this subsection.

**History.** Acts 1987, No. 837, § 3; 1993, No. 280, § 1; 1999, No. 646, § 58; 2003, No. 1459, § 3; 2013, No. 1091, § 1; 2019, No. 315, §§ 2043, 2044; 2019, No. 910, § 6021; 2021, No. 1094, § 1.

**Amendments.** The 2019 amendment by No. 315 substituted "rule" for "regulation" in (a)(1); and deleted "and regulations" following "rules" in (a)(9).

The 2019 amendment by No. 910 substituted "Division of Emergency Management" for "Arkansas Department of Emergency Management" in (a)(5).

The 2021 amendment added (c).

## 20-22-805. Office of Fire Protection Services — Creation.

(a) There is created the Office of Fire Protection Services which shall be under the supervision and direction of the Director of the Division of Emergency Management.

(b) The Director of the Office of Fire Protection Services, who shall be employed by the Director of the Division of Emergency Management, in consultation with the Secretary of the Department of Public Safety, shall have the responsibility to carry out the administrative functions and directives of the Arkansas Fire Protection Services Board.

(c) [Repealed.]

**History.** Acts 1987, No. 837, § 4; 1993, No. 280, § 2; 1999, No. 646, § 59; 2019, No. 910, § 6022.

**Amendments.** The 2019 amendment substituted "Division of Emergency Management" for "Arkansas Department of Emergency Management" in (a) and (b); inserted "in consultation with the Secretary of the Department of Public Safety" in (b); and repealed (c).

## Subchapter 10 — Arkansas Comprehensive Fire Protection Act of 1993

SECTION.


### 20-22-1006. Arkansas Fire Protection Services Resources Plan.

(a) The Office of Fire Protection Services shall facilitate and coordinate, with the cooperation and assistance of the fire services agencies listed in § 20-22-1004(c), the development and formulation of a comprehensive program for the orderly coordination, cooperation, and development of resources of the State of Arkansas and its local governments, to be referred to as the "Arkansas Fire Protection Services Resources Plan". The plan shall include plans:

(1) For providing fire services in the various rural areas of this state which do not have available the benefits or services of an organized or voluntary firefighting program;

(2) For updating and improving fire services in urban, suburban, and rural areas which have fire services but which need improvements and for assisting existing organized or volunteer firefighting services in making those improvements;

(3) On the type, needs, and means to procure firefighting vehicles and equipment for fire services agencies of local governments;

(4) On developing training programs designed to instruct and train firefighters at the Arkansas Fire Training Academy to be employed or used by both urban and rural organized and volunteer fire services agencies;

(5) To coordinate the efforts of all state and local government fire services agencies for the purpose of making maximum use of the services and resources for the prevention and mitigation of injury and damage caused by fire and other hazards;

(6) To measure the prompt and effective response to fires and other hazards and disasters;

(7) To identify areas particularly vulnerable to fire and hazards and other disasters; and

(8) To make recommendations for improvements in the firefighting, prevention, training, mitigation, and adjunct services for state and local fire services agencies.

(b) In coordinating the preparation and revision of the plan, the office shall seek the advice and assistance of and cooperate with state agencies, including the State Fire Marshal, the Arkansas Fire Training Academy, and the Rural Fire Protection Service, with all fire services agencies of local governments, with business, labor, industry, agriculture, civic and volunteer organizations, and with community leaders.

(c) The plan or any part thereof may be incorporated into rules of the office, the Division of Emergency Management, or executive orders which have the force and effect of law.

**History.** Acts 1993, No. 1303, § 6; 1999, No. 646, § 62; 2019, No. 315, § 2045.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (c).

# CHAPTER 23

# BOILER SAFETY

SUBCHAPTER.



## Subchapter 1 — General Provisions

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries" and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-23-101. Definitions.

As used in this chapter:

(1) "Boiler" or "boilers" means any boiler or like vessel or container in which water is heated or steam is generated by the application of heat and includes:

(A) Steam boilers that generate steam under pressure and include:

(i) High pressure steam boilers that generate steam under pressure more than fifteen pounds per square inch gauge (15 psig); and

(ii) Low pressure steam heating boilers that generate steam at fifteen pounds per square inch gauge (15 psig) or less for heating purposes;

(B) Hot water heating boilers that heat water for the external use of heating any area or building; and

(C) Hot water heaters that are used for heating water for external use;

(2) "Horsepower" means the evaporation of thirty-four and five-tenths pounds (34.5 lbs.) of water from a temperature of two hundred twelve degrees Fahrenheit (212° F) into steam at two hundred twelve degrees Fahrenheit (212° F) at fourteen and seven-tenths pounds per square inch absolute (14.7 psia);

(3) "Internal" and "external" inspection means a thorough and proper inspection as provided for in the rules by the Boiler Inspection Division;

(4)(A) "Pressure piping" means power piping systems and their component parts within or forming a part of the pressure piping system connected to any boiler or unfired pressure vessel covered by the provisions of this chapter.

(B) This includes only boiler external piping for power boilers and high-temperature, high pressure water boilers in which:

(i) Steam or vapor is generated at a pressure of more than fifteen pounds per square inch gauge (15 psig); and

(ii) High-temperature water is generated at pressures exceeding one hundred sixty pounds per square inch gauge (160 psig) and temperatures exceeding two hundred fifty degrees Fahrenheit (250° F) or one hundred twenty degrees Centigrade (120° C), or both.

(C) Boiler external piping shall be considered as that piping which begins where the boiler proper terminates at:

(i) The first circumferential joint for welding end connections;

(ii) The face of the first flange in bolted flanged connections; or

(iii) The first threaded joint in that type of connection and which extends up to and includes the valve or valves required by rule;

(5) "Pressure vessel" means any unfired pressure vessel constructed for the accumulation, storage, or transportation of air, liquids, or gases that are under induced pressure; and

(6) "PSIG" means pounds per square inch gauge pressure.

**History.** Acts 1961, No. 494, § 9; A.S.A. 1947, § 81-509; Acts 1993, No. 477, § 1; 1999, No. 982, § 1; 2005, No. 1012, § 1; 2019, No. 315, §§ 2046, 2047.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (3); and substituted "rule" for "regulation" in (4)(C)(iii).

## 20-23-102. Exceptions.

(a) The provisions of this chapter shall not apply to:

(1) Inspection and installation permit requirements on air storage vessels located in service stations and garages;

(2) Air tanks of twelve gallons (12 gals.) or less containing one hundred fifty pounds per square inch (150 psi) or less;

(3) Boilers and unfired pressure vessels which are under the inspection regulations of the United States Surface Transportation Board;

(4) Boilers and unfired pressure vessels used for domestic purposes in private residences and apartment houses of eight (8) or fewer apartments;

(5) Unfired pressure vessels, other than air tanks or vessels listed in subdivisions (a)(1)-(4) of this section, where the maximum allowable working pressure is fifteen pounds per square inch (15 psi) or less or a volume of five cubic feet (5 cu. ft.) or less, coil-type steam generators without accumulative drum, or vessels used in connection with or the storage of liquefied petroleum gases. However, all such unfired pressure vessels shall be constructed in compliance with the appropriate regulations, or rules applicable thereto;

(6) Hot water heaters under two hundred thousand British thermal units (200,000 Btu), except those heaters located in hospitals, schools, daycare centers, and nursing homes;

(7) Hot water supply storage tanks which are heated by steam or any other direct or indirect means when heat input is less than two hundred thousand British thermal units per hour (200,000 Btu/hr.), when water temperature is less than two hundred ten degrees Fahrenheit (210° F), and when the vessel has a nominal water-containing capacity of less than one hundred twenty gallons (120 gals.);

(8) Pressure vessels which are an integral part of:

(A) Components of rotating or reciprocating mechanical devices and hydraulic or pneumatic cylinders where the primary design considerations and stress are derived from the functional requirements of the device; or

(B) The structure and have a primary function of transporting fluids from one (1) location to another within a system; and

(9) Vessels with a nominal water-containing capacity of one hundred twenty gallons (120 gals.) or less for containing water under pressure, including those containing air, the compression of which serves only as a cushion.

(b) This chapter shall not apply to inspection, installation permit requirements, or regulation of boilers and unfired pressure vessels used in connection with the production, distribution, storage, or transmission of oil, natural gas, or casinghead gas.

**History.** Acts 1961, No. 494, § 9; 1963, No. 100, § 1; 1965, No. 549, § 1; 1983, No. 516, § 1; A.S.A. 1947, § 81-509; Acts 1999, No. 982, § 2; 2019, No. 315, § 2048.

**Amendments.** The 2019 amendment inserted "or rules" in the second sentence of (a)(5).

## 20-23-103. Enforcement.

(a) The criminal penalties provided by this chapter shall be enforced by the prosecuting attorney of each judicial district. The administrative penalties provided by this chapter shall be imposed pursuant to rules of the Director of the Division of Labor.

(b) The director may collect an administrative penalty imposed pursuant to this chapter in a civil action in a court of competent jurisdiction, and he or she shall not be required to pay costs or to enter a bond for payment of costs.

**History.** Acts 1961, No. 494, § 6; 1970 (1st Ex. Sess.), No. 65, § 2; 1975, No. 162, § 3; 1977, No. 404, § 1; 1979, No. 526, § 3; 1981, No. 9, § 3; 1983, No. 303, § 3; A.S.A. 1947, § 81-506; Acts 1999, No. 982, § 3; 2019, No. 315, § 2049; 2019, No. 910, § 5451.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulation" in the second sentence of (a).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in the second sentence of (a).

## 20-23-104. Periodic or regular attendance.

(a) All boilers subject to the provisions of this chapter shall be continuously monitored by mechanical and electronic devices approved by the Director of the Division of Labor. When a plant is in operation or when any public building is occupied, the boilers shall be under regular attendance by a boiler operator unless otherwise exempt.

(b) Boilers that are manually operated shall be under constant attendance whenever they are in use for any purpose.

(c) All steam boilers fifty horsepower (50 hp) and over, as rated by the manufacturer in any location, and steam boilers used in hospitals, hotels, schools, theatres, and office buildings, but not limited to these places, shall be under regular attendance by a licensed operator who holds a certificate of competency issued by the Boiler Inspection Division.

**History.** Acts 1961, No. 494, § 7; 1970 (1st Ex. Sess.), No. 65, § 3; 1975, No. 162, § 4; 1979, No. 526, § 4; 1981, No. 9, § 4; 1983, No. 303, § 4; 1985, No. 67, § 1; A.S.A. 1947, § 81-507; Acts 1999, No. 982, § 4; 2019, No. 910, § 5452.

**Amendments.** The 2019 amendment substituted "Division of Labor" for "Department of Labor" in the first sentence of (a).

## 20-23-105. Disposition of funds.

(a) All money received under this chapter shall be paid to the Treasurer of State, who shall place this money to the credit of the Department of Labor and Licensing Special Fund, there to be used by the Department of Labor and Licensing in carrying out the functions, powers, and duties as set out in this chapter and to defray the costs of the maintenance, operation, and improvements required by the department in carrying out the functions, powers, and duties otherwise imposed by law on the department or the Director of the Division of Labor.

(b) The director may issue vouchers for salaries and expenses of the Boiler Inspection Division when proper appropriation has been made for the expenditures.

**History.** Acts 1961, No. 494, § 8; A.S.A. 1947, § 81-508; Acts 2001, No. 577, § 6; 2019, No. 910, § 5453.

**Amendments.** The 2019 amendment, in (a), substituted "Department of Labor and Licensing" for the first two occurrences of "Department of Labor", and substituted "Division of Labor" for the third occurrence of "Department of Labor".

## Subchapter 2 — Administration



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-23-202. Chief inspector, deputy inspector, etc.

(a)(1) When the office of Chief Inspector of the Boiler Inspection Division becomes vacant, the Director of the Division of Labor shall employ a citizen of the State of Arkansas to be chief inspector.

(2) The chief inspector shall have at the time of employment not less than ten (10) years' experience in the construction, maintenance, installation, and repair or inspection of high pressure boilers and unfired pressure vessels.

(b)(1)(A) The director is authorized and empowered to employ a technical assistant and deputy inspectors of boilers.

(B) Inspectors of steam boilers and unfired pressure vessels shall have had at the time of employment not less than five (5) years' experience in the construction, maintenance, installation, and repair of high pressure boilers and unfired pressure vessels or possess a currently valid commission from the National Board of Boiler and Pressure Vessel Inspectors.

(C)(i) Inspectors of steam boilers and unfired pressure vessels also shall have passed a written examination.

(ii) The examination shall conform to standards not exceeding those prescribed by the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.

(iii) The examination shall test the inspector's knowledge of the construction, installation, maintenance, and repair of boilers and their appurtenances.

(2) The director is also empowered to employ clerical and administrative employees, as well as other inspectors, as necessary to perform the work of the Boiler Inspection Division.

(3) The salaries are to be approved by the General Assembly.

(c) The salaries of the employees of the Boiler Inspection Division, together with the necessary expenses of the Boiler Inspection Division, shall be paid out of the fees for which provision is made in this chapter.

**History.** Acts 1961, No. 494, § 1; A.S.A. 1947, § 81-501; Acts 1989, No. 927, § 3; 1999, No. 982, § 6; 2005, No. 1012, § 2; 2019, No. 910, § 5454.

**Amendments.** The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (a)(1).

## 20-23-203. Chief inspector's duty to inspect and enforce.

(a) The Chief Inspector of the Boiler Inspection Division, either personally or by a deputy inspector, shall carefully:

(1)(A) Unless the chief inspector grants an extension of time for good cause, inspect internally and externally one (1) time annually every high pressure steam boiler and steam generating apparatus.

(B) An extension of time under subdivision (a)(1)(A) of this section:

(i) Shall not exceed six (6) months; and

(ii) Shall cause the time period for the next annual inspection to begin on the day following the date of the inspection that was extended;

(2) Inspect externally one (1) time annually and internally one (1) time every three (3) years every low pressure steam heating boiler to the extent permitted by the design and construction of the boiler;

(3) Inspect one (1) time biennially every unfired pressure vessel located in this state that is not excepted from the inspections by this chapter; and

(4) Give the owner or operator of the boiler notice of the time when an internal inspection will be made.

(b) The chief inspector shall have free access at all reasonable times for himself or herself and his or her deputies to any premises in this state where a boiler or pressure piping is being built or where a boiler or pressure piping or power plant apparatus is being installed or operated, for the purpose of ascertaining whether the boiler or piping or apparatus is built, installed, and fitted with the necessary appliances and operated in accordance with this chapter and the rules adopted pursuant to this chapter.

(c)(1) The chief inspector shall enforce the laws of the state governing the use of boilers and unfired pressure vessels. He or she shall examine into and report to the Director of the Division of Labor the causes of boiler explosions which occur within the state.

(2) He or she shall keep in his or her office a complete and accurate record of the names of all owners or operators of boilers inspected by the Boiler Inspection Division, together with the location, make, type, dimensions, age, condition, pressure allowed upon, and date of the last inspection of all boilers and shall make an annual report thereon to the director.

**History.** Acts 1961, No. 494, § 3; 1970 (1st Ex. Sess.), No. 65, § 1; 1975, No. 162, § 2; 1979, No. 526, § 2; 1981, No. 9, § 2; 1983, No. 303, § 2; A.S.A. 1947, § 81-503;

Acts 1993, No. 477, § 3; 1999, No. 982, § 7; 2005, No. 1012, § 3; 2015, No. 95, § 1; 2019, No. 315, § 2050; 2019, No. 910, § 5455.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in the second sentence of (c)(1).

## Subchapter 3 — Certification of Boilers



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-23-301. Certificate of inspection required — Application of rules and standards — Penalties.

(a)(1) No owner or user of a boiler or pressure vessel or engineer or fireman in charge of a boiler or pressure vessel shall operate or allow the boiler or pressure vessel to be operated without a certificate of inspection issued by the Director of the Division of Labor or shall allow a greater pressure in the boiler or pressure vessel than is allowed by the certificate of inspection.

(2)(A) All boilers and pressure vessels installed or in operation in this state shall conform to those rules and standards that shall from time to time be adopted by the Boiler Inspection Division with the approval of the director.

(B) The rules and standards shall not exceed those set out in the several sections of the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers and shall have the force of law immediately upon their approval by the director.

(3) No person shall operate or cause to be operated any boiler or unfired pressure vessel on which the certificate of inspection has been suspended or the operation of which has been forbidden by an inspector as provided in §§ 20-23-203, 20-23-306, 20-23-310, 20-23-401, and 20-23-402.

(4) All pressure piping installed in this state shall conform to those rules and standards that shall from time to time be adopted by the Boiler Inspection Division with the approval of the director. The rules and standards shall not exceed those set out in the American Society of Mechanical Engineers Code for Pressure Piping, Power Piping Code, B31.1.

(b) Any person violating this section shall be subject to an administrative fine of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000).

**History.** Acts 1961, No. 494, § 5; A.S.A. 1947, § 81-505; Acts 1993, No. 477, § 4; 1999, No. 982, § 8; 2005, No. 1012, § 4; 2019, No. 315, §§ 2051, 2052; 2019, No. 910, § 5456.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" twice in (a)(2) and (a)(4).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (a)(1).

## 20-23-302. Report by manufacturer, owner, and user.

(a) Every manufacturer, owner, or user of a boiler or unfired pressure vessel in use or to be used in any part of the state and subject to inspection by the Boiler Inspection Division, as provided by this chapter, shall report to the division the location of the boiler or unfired pressure vessel at such times and in such manner and form as may be determined by the rules of the division.

(b) Any owner, user, or agent of the owner of any boiler or unfired pressure vessel subject to inspection by the division, as provided in this chapter, who shall fail to report its location to the division shall be subject to an administrative fine of not less than one hundred dollars ($100).

**History.** Acts 1961, No. 494, §§ 4, 6; 1970 (1st Ex. Sess.), No. 65, § 2; 1975, No. 162, § 3; 1977, No. 404, § 1; 1979, No. 526, § 3; 1981, No. 9, § 3; 1983, No. 303, § 3; A.S.A. 1947, §§ 81-504, 81-506; Acts 1999, No. 982, § 9; 2019, No. 315, § 2053.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (a).

## 20-23-306. Issuance.

(a)(1) Upon receipt by the Boiler Inspection Division of an annual or biennial certificate report of inspection from a state inspector or from an inspector employed by an insurance company that a boiler or pressure vessel is in safe working condition with the required fittings, valves, and appliances properly installed and set, the Director of the Division

of Labor shall issue to the owner of the boiler or pressure vessel a certificate of inspection.

(2) The certificate of inspection shall be issued upon payment of a fee of fifteen dollars ($15.00) in cases of all boilers other than unfired pressure vessels and a fee of thirty dollars ($30.00) in cases of unfired pressure vessels.

(3) The certificate of inspection shall state the maximum pressure at which the boiler or pressure vessel may be operated as may be determined by the rules adopted by the Boiler Inspection Division, as provided in this chapter.

(b) Upon receipt of a certificate of inspection under subsection (a) of this section, unless the certificate of inspection is withdrawn or suspended the owner or user may operate boilers:

(1) Other than unfired pressure vessels described in the certificate for one (1) year from the date of annual inspection plus any extension granted under § 20-23-203(a) of the time for the next annual inspection; and

(2) That are unfired pressure vessels for two (2) years from the date of biennial inspection.

(c) Any owner or operator of a boiler or pressure vessel who is dissatisfied with the result of an inspection made by an inspector employed by an insurance company may appeal to the Chief Inspector of the Boiler Inspection Division, who shall cause a special investigation to be conducted and, upon the report of the inspection, shall render his or her decision, the decision to be final.

**History.** Acts 1961, No. 494, § 3; 1970 (1st Ex. Sess.), No. 65, § 1; 1975, No. 162, § 2; 1979, No. 526, § 2; 1981, No. 9, § 2; 1983, No. 303, § 2; A.S.A. 1947, § 81-503; Acts 1999, No. 982, § 12; 2003, No. 1184, § 1; 2015, No. 95, § 2; 2019, No. 910, § 5457.

**Amendments.** The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (a)(1).

## 20-23-309. New boilers and unfired pressure vessels — Penalty.

Every manufacturer, jobber, dealer, or individual selling or offering for sale or operating any boiler or unfired pressure vessel or installing any pressure piping that does not meet the requirements of the rules adopted under this chapter shall be guilty of a felony and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) and in addition may be imprisoned for not more than three (3) years, or both.

**History.** Acts 1961, No. 494, § 7; 1970 (1st Ex. Sess.), No. 65, § 3; 1975, No. 162, § 4; 1979, No. 526, § 4; 1981, No. 9, § 4; 1983, No. 303, § 4; A.S.A. 1947, § 81-507; Acts 1993, No. 477, § 7; 2019, No. 315, § 2054.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules".

**20-23-310. Suspension.**

(a)(1) The Chief Inspector of the Boiler Inspection Division or his or her authorized representatives may at any time suspend an inspection certificate when in their opinion the boiler or unfired pressure vessel for which it was issued cannot be operated without menace to the public safety or when the boiler or unfired pressure vessel is found not to comply with the rules provided in this subchapter.

(2) Any insurance company inspector who has been issued an Arkansas commission and is inspecting boilers or pressure vessels in this state shall have corresponding powers with respect to operating certificates for boilers or pressure vessels insured by the company employing him or her.

(3) The suspension of an operating certificate shall continue in effect until the boiler or pressure vessel shall have been made to conform to the rules of the Boiler Inspection Division and until the operating certificate shall have been reinstated.

(b) Any inspector of the division or any commissioned inspector of any insurance company who after inspection of a boiler or unfired pressure vessel shall find it unsafe for operation shall suspend its certificate of inspection and forbid its further use until it shall have been made to conform to the standards adopted by the division and until its certificate of inspection shall have been reinstated by an authorized inspector.

**History.** Acts 1961, No. 494, §§ 3, 4; 1970 (1st Ex. Sess.), No. 65, § 1; 1975, No. 162, § 2; 1979, No. 526, § 2; 1981, No. 9, § 2; 1983, No. 303, § 2; A.S.A. 1947, §§ 81-503, 81-504; Acts 1999, No. 982, § 14; 2019, No. 315, §§ 2055, 2056.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (a)(1) and (a)(3).

**20-23-311. Inspection fees generally.**

(a) Within thirty (30) days from the date of inspection, there shall be paid for the annual inspection of each boiler by the Boiler Inspection Division made according to the provisions of this chapter, the sum as follows:

(1) Boilers:

| | |
|---|---|
| (A) Up to and including 15 horsepower, incl. | $10.00 |
| (B) Over 15 horsepower to 50 horsepower, incl. | 13.00 |
| (C) Over 50 horsepower to 100 horsepower, incl. | 18.00 |
| (D) Over 100 horsepower to 150 horsepower, incl. | 20.00 |
| (E) Over 150 horsepower to 250 horsepower, incl. | 23.00 |
| (F) Over 250 horsepower to 500 horsepower, incl. | 35.00 |
| (G) Over 500 horsepower | 50.00 |

(2) Shop inspections: per day, four hundred forty dollars ($440); per half day, two hundred and twenty dollars ($220); plus expenses, including mileage not to exceed the rate authorized by the General Assembly to employees of state agencies who furnish their own trans-

portation, and meals and lodging in accordance with that approved by the General Assembly as a daily allowance; and

(3) Unfired pressure vessels:

| | |
|---|---|
| (A) 150 gallons or less | $9.00 |
| (B) 151 gallons to 500 gallons | 10.00 |
| (C) 501 gallons to 1,000 gallons | 11.00 |
| (D) 1,001 gallons to 2,000 gallons | 12.00 |
| (E) 2,001 gallons to 3,000 gallons | 13.00 |
| (F) 3,001 gallons to 5,000 gallons | 14.00 |
| (G) 5,001 gallons and over | 18.00 |

(b) The rates in subsection (a) of this section may be reduced by the Director of the Division of Labor at the beginning of any fiscal year if the rates produce a greater amount of revenue than is required to defray the cost of operation of the Boiler Inspection Division.

(c) All inspection fees shall be paid by the owner, user, or agent of the owner, and the inspector may receive the fee and issue his or her receipt therefor.

(d) If the owner, user, or agent of the owner shall fail to pay any inspection fee under this section within thirty (30) days, a civil money penalty equal to the amount of the unpaid fee shall attach to the outstanding amount of the fee, and the director shall be empowered to collect this penalty in addition to the amount of the fee.

**History.** Acts 1961, No. 494, § 6; 1970 (1st Ex. Sess.), No. 65, § 2; 1975, No. 162, § 3; 1977, No. 404, § 1; 1979, No. 526, § 3; 1981, No. 9, § 3; 1983, No. 303, § 3; A.S.A. 1947, § 81-506; Acts 1991, No. 560, § 2; 1997, No. 220, § 1; 2019, No. 910, § 5458.

**Amendments.** The 2019 amendment, in (b), substituted "Division of Labor" for "Department of Labor", and substituted "Boiler Inspection Division" for "division".

### 20-23-312. Inspection fees — Collection.

(a)(1) In addition to other remedies provided for by this chapter, if after the making of any inspection or accrual of any charge or penalty required or authorized by this chapter, the fee, penalty, or charge is not paid within thirty (30) days after demand upon whoever is liable therefor, the Director of the Division of Labor may employ an attorney, who is empowered without payment of costs or giving of bond for costs to institute suit in the name of the State of Arkansas in any court of competent jurisdiction to collect the fees, penalties, costs, and charges.

(2)(A) The court where suit is brought pursuant to subdivision (a)(1) of this section for collection of fees, penalties, and charges shall, without limitation, based on the actual amount of the judgment award an attorney's fee equal to the actual cost to the Division of Labor or the Boiler Inspection Division for the regular hourly rate of pay of the attorney multiplied by the actual hours, including, but not limited to, travel time, litigation, and case review.

(B) Furthermore, the court shall award, without limitation, based on the actual amount of the judgment an amount equal to all costs

incurred by the Division of Labor or the Boiler Inspection Division, including, but not limited to, travel costs, witness fees, sheriff's service fees, or costs incurred pursuant to the collection of any judgment obtained by the Division of Labor or the Boiler Inspection Division.

(b)(1) The plaintiff in the suits is given a lien upon the boiler and all parts, connections, and attachments thereto, whether attached to the land or not, to accrue the payment of the inspection fees for making the inspection.

(2) The lien shall attach to the property at the time of making the inspection and shall continue until all inspection fees are paid.

(3) The lien, when it so attaches, shall be held to be prior, paramount, and superior to the liens, claims, and demands of all persons whomsoever, whether owners, agents, mortgagees, trustees, and beneficiaries under trusts or owners whether prior in time or not.

**History.** Acts 1961, No. 494, § 6; 1970 (1st Ex. Sess.), No. 65, § 2; 1975, No. 162, § 3; 1977, No. 404, § 1; 1979, No. 526, § 3; 1981, No. 9, § 3; 1983, No. 303, § 3; A.S.A. 1947, § 81-506; Acts 1997, No. 220, § 2; 2019, No. 910, § 5459.

**Amendments.** The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (a)(1) and (a)(2)(A); and, in (a)(2)(B), substituted "Division of Labor" for "department" twice, and substituted "Boiler Inspection Division" for "division".

## 20-23-314. Pressure piping inspections.

(a) The installation of pressure piping shall be periodically inspected during the course of the installation by an inspector commissioned pursuant to the provisions of § 20-23-401 in the manner and with the frequency prescribed by the rules of the Boiler Inspection Division.

(b)(1) Upon completion of the installation of any pressure piping, a final inspection shall be made, and the inspector shall complete a final inspection report on a form approved by the Director of the Division of Labor.

(2) A copy of the final inspection report shall be filed with the Boiler Inspection Division within thirty (30) days of completion of the installation.

(c) If the report required by subsection (b) of this section is not filed within thirty (30) days after completion of the installation, the Boiler Inspection Division shall designate an inspector in its employ to make the inspection and report required by subsection (b) of this section.

(d) The inspections and reports required by subsections (a) and (b) of this section may be made by an inspector in the employ of the Boiler Inspection Division.

(e) For each inspection made by an inspector employed by the Boiler Inspection Division and required by subsection (a), subsection (b), or subsection (c) of this section, the holder of the installation permit shall pay the Boiler Inspection Division an inspection fee in the amount of four hundred forty dollars ($440) per day or two hundred twenty dollars ($220) per half-day, plus expenses and mileage at the rates authorized

for employees of the Division of Labor who furnish their own transportation.

(f) The inspections required by this section and the installation permit required for pressure piping by § 20-23-307 shall apply only to new installations and shall not be construed as requiring an inspection or an installation permit for maintenance, repair, or renovation of existing facilities.

**History.** Acts 1993, No. 477, § 8; 2019, No. 315, § 2057; 2019, No. 910, § 5460.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (b)(1) and (e); and substituted "Boiler Inspection Division" for "division" in (b)(2), (c), and (d).

## Subchapter 4 — Certification of Inspectors, Operators, Etc.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-23-402. Inspectors employed by insurance companies.

(a) Boiler inspectors employed by insurance companies which are authorized to insure boilers in this state shall hold certificates of competency issued by the Boiler Inspection Division as provided in this section and shall:

(1) Inspect internally and externally at least one (1) time annually or within the time granted under § 20-23-203(a) all high pressure steam boilers insured by their respective companies;

(2) Inspect externally one (1) time annually and internally one (1) time every three (3) years every low pressure steam heating boiler insured by their respective companies; and

(3) Inspect unfired pressure vessels biennially.

(b) The insured boilers shall be exempt from all inspections other than those of the respective insurance company inspectors unless there is some evidence that proper inspection is not being made.

(c) Within thirty (30) days following each internal inspection made by its inspectors, each insurance company shall file a copy of the internal inspection report and date of the inspection with the Boiler Inspection Division on forms approved by the Division of Labor.

(d)(1) Each insurance company shall file a report annually of all boilers insured and inspected showing location, owner, state number, and date of last inspection.

(2) The report shall be filed not later than January 30 of each calendar year.

(e)(1) If annual reports are not filed with the Boiler Inspection Division by insurance companies who have insurance on boilers in the State of Arkansas within sixty (60) days from the date they are due inspection, the Boiler Inspection Division shall make the required inspection.

(2) A special inspection fee of one hundred dollars ($100) for each boiler or unfired pressure vessel inspected, plus mileage and expenses from Little Rock to point of inspection and return not to exceed the current rate authorized by the General Assembly to employees of state agencies who furnish their own transportation, plus any meals and hotel bills incurred shall be charged to the insurance company insuring the boilers or unfired pressure vessels unless an extension of time is granted by the Chief Inspector of the Boiler Inspection Division.

(f) No operating certificate issued for an insured boiler inspected by an insurance company inspector shall be valid after the boiler for which it was issued shall cease to be insured by a company authorized by this state to carry the insurance.

**History.** Acts 1961, No. 494, § 3; 1970 (1st Ex. Sess.), No. 65, § 1; 1975, No. 162, § 2; 1979, No. 526, § 2; 1981, No. 9, § 2; 1983, No. 303, § 2; A.S.A. 1947, § 81-503; Acts 1991, No. 560, § 3; 2005, No. 1012, § 5; 2015, No. 95, § 3; 2019, No. 910, § 5461.

**Amendments.** The 2019 amendment, in (c), substituted "Boiler Inspection Division" for "division" and "Division of Labor" for "Department of Labor".

## 20-23-403. Inspectors — Failure to perform duties.

(a) Any inspector of boilers who shall report a boiler or pressure vessel for a certificate of inspection as safe to operate while knowing the report is false and that the boiler is unsafe to operate, who shall fail to perform his or her duties as stated in this chapter, or who shall cause the repair, installation, or sale of a boiler or pressure vessel that does not comply with the standards as set out in this chapter and the rules provided shall be guilty of a felony.

(b) Upon conviction he or she shall be punished by a fine in any sum not less than one hundred dollars ($100) nor more than five hundred

dollars ($500) or by imprisonment not to exceed three (3) years, or by both fine and imprisonment.

**History.** Acts 1961, No. 494, § 7; 1970 (1st Ex. Sess.), No. 65, § 3; 1975, No. 162, § 4; 1979, No. 526, § 4; 1981, No. 9, § 4; 1983, No. 303, § 4; A.S.A. 1947, § 81-507; Acts 1999, No. 982, § 16; 2019, No. 315, § 2058.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (a).

### 20-23-404. Operators.

(a)(1) The Boiler Inspection Division shall conduct examinations for each applicant seeking a boiler operator's license.

(2) The examination may be either written or oral.

(3) Each applicant shall pay a fee of twenty-five dollars ($25.00) for the examination and the first license.

(4) Each license shall be renewed annually. The annual fee shall be seventeen dollars ($17.00).

(5) Before the applicant may participate in an examination, he or she shall have had not less than six (6) months of on-the-job training. Proof of this on-the-job training shall be furnished to the Division of Labor by the employer before the examination.

(6) A restricted license may be issued to an applicant who has passed the examination required in this subsection but who has not met the requirements of subdivision (a)(5) of this section, provided that:

(A) The restricted license shall be effective for one (1) year from the date of issue; and

(B) The licensee is to work under the direction and supervision of a regularly licensed boiler operator.

(b)(1) Any operator found operating a boiler without a certificate issued by the Boiler Inspection Division or operating a boiler knowing it to be defective shall have his or her license revoked at once.

(2) Any person found operating a boiler without an operator's license shall be subject to an administrative fine of not less than twenty-five dollars ($25.00) and not more than one hundred dollars ($100).

**History.** Acts 1961, No. 494, § 7; 1970 (1st Ex. Sess.), No. 65, § 3; 1975, No. 162, § 4; 1979, No. 526, § 4; 1981, No. 9, § 4; 1983, No. 303, § 4; A.S.A. 1947, § 81-507; Acts 1999, No. 982, § 17; 2003, No. 1184, § 2; 2019, No. 910, § 5462.

**Amendments.** The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (a)(5).

### 20-23-405. Sellers, installers, and repairers.

(a)(1) All persons, firms, or corporations engaged in the sale or installation of boilers, unfired pressure vessels, hot water storage containers, or pressure piping in any location shall be licensed by the Boiler Inspection Division to perform the work.

(2) The annual license fee shall be seventy-five dollars ($75.00) per year, payable in advance on or before January 31 of each calendar year.

(b)(1) All persons, firms, or corporations engaged in the repair of boilers or unfired pressure vessels shall be licensed by the division.

(2) The annual license fee shall be seventy-five dollars ($75.00) annually, payable in advance on or before January 31 of each calendar year.

(c) Each person, firm, or corporation shall furnish evidence suitable to the division that the person, firm, or coporation is qualified to perform the work.

(d) The license of any person, firm, or corporation may be revoked by the division upon proof that the person, firm, or corporation is not performing the work in compliance with this chapter and the rules as provided in this chapter.

(e) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000) or by imprisonment for not more than five (5) years or by both fine and imprisonment.

(f) The provisions of §§ 20-23-104, 20-23-307 — 20-23-309, 20-23-403, 20-23-404, and this section shall not apply to firms under the regulation of the United States Surface Transportation Board.

**History.** Acts 1961, No. 494, § 7; 1970 (1st Ex. Sess.), No. 65, § 3; 1975, No. 162, § 4; 1979, No. 526, § 4; 1981, No. 9, § 4; 1983, No. 303, § 4; A.S.A. 1947, § 81-507; Acts 1991, No. 560, § 4; 1993, No. 477, § 9; 2019, No. 315, § 2059.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (d).

## 20-23-406. Restricted lifetime license — Certificate of competency and commission.

(a)(1)(A) Upon reaching sixty-five (65) years of age or any time thereafter, any person who has been a boiler inspector for no fewer than twelve (12) years may apply for a restricted lifetime boiler inspector's certificate of competency and commission.

(B) The certificate of competency and commission shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the Division of Labor.

(2)(A) Upon reaching sixty-five (65) years of age or any time thereafter, any person who has been a boiler operator for no fewer than twelve (12) years may apply for a restricted lifetime boiler operator's license.

(B) The license shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the division.

(3)(A) Upon reaching sixty-five (65) years of age or any time thereafter, any person who has been engaged in the sale or installation of boilers, unfired pressure vessels, hot water storage containers, or pressure piping for no fewer than twelve (12) years may apply for a restricted lifetime license.

(B) The license shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the division.

(4)(A) Upon reaching sixty-five (65) years of age or any time thereafter, any person who has been engaged in the repair of boilers or unfired pressure vessels for no fewer than twelve (12) years may apply for a restricted lifetime license.

(B) The license shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the division.

(b) The division shall promulgate rules necessary to carry out the provisions of this section.

**History.** Acts 1999, No. 141, § 1; 2019, No. 315, § 2060; 2019, No. 910, § 5463.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (a)(1)(B).

## 20-23-407. Owner or user inspection programs.

(a) Any owner or user of a steam boiler or pressure vessel subject to this chapter may perform any inspections required by this chapter on such vessels owned or operated by the owner or user if the owner or user meets the requirements prescribed by rule of the Director of the Division of Labor.

(b) The director shall set out requirements for the certification of owner or user inspectors and certification of owner or user inspection programs by rule and shall have full authority to promulgate and enforce those rules.

(c)(1)(A) After notice and opportunity for hearing, any owner or user who is found to have violated rules prescribed by the director pursuant to this subchapter shall be assessed a civil monetary penalty of not less than one hundred dollars ($100) or more than five thousand dollars ($5,000).

(B) Each day that a violation continues shall be considered a separate violation.

(2) The director may bring a civil action in a court of competent jurisdiction to recover the amount of any civil monetary penalties.

(d) In addition to civil monetary penalties, any owner or user who is found to be in violation of this section shall be guilty of a Class A misdemeanor.

**History.** Acts 2001, No. 1283, § 1; 2019, No. 315, §§ 2061, 2062; 2019, No. 910, § 5464.

**Amendments.** The 2019 amendment by No. 315 substituted "rule" for "regulation" in (a) and (b); and substituted "rules" for "regulations" in (b) and (c)(1)(A).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (a).

# CHAPTER 24

# ELEVATORS, DUMBWAITERS, AND ESCALATORS



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-24-101. Definitions.

As used in this chapter:

(1) "Alteration" means any change made to an existing conveyance or to its hoistway, enclosure, or doors other than the repair or replacement of damaged, worn, or broken parts necessary for normal operation. The changing of the speed governor shall be considered an alteration;

(2) "Authorized representative" means the building department of cities, towns, or other governmental subdivisions designated by the Division of Occupational and Professional Licensing Boards and Commissions to enforce certain provisions of this chapter;

(3) [Repealed.]

(4) "Conveyance" means an elevator, dumbwaiter, escalator, moving sidewalk, automatic people mover, platform lift, or stairway chair lift;

(5) [Repealed.]

(6) [Repealed.]

(7) "Dormant elevator, dumbwaiter, or escalator" means:

(A) An elevator or dumbwaiter whose:

(i) Cables have been removed;

(ii) Car and counterweight rest at the bottom of the shaftway; and

(iii) Shaftway doors are permanently boarded up or barricaded on the inside; or

(B) An escalator whose main power feed lines have been disconnected;

(8) "Dumbwaiter" means a hoisting and lowering mechanism, driven by mechanical power, equipped with a car which moves in guides in a substantially vertical direction, the floor area of which does not exceed nine square feet (9 sq. ft.), whose total compartment height does not exceed four feet (4'), the capacity of which does not exceed five hundred pounds (500 lbs.), and which is used exclusively for carrying freight;

(9)(A) "Elevator" means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction.

(B) "Elevator" shall not include a conveyor, chain or bucket hoist, construction hoist, or similar devices used for the primary purpose of elevating or lowering materials, nor shall it include tiering, piling, feeding, or similar machines or devices giving service within only one (1) story.

(C) "Power elevator" means those driven by the application of energy other than hand or gravity.

(D) "Hand elevators" means those driven by manual power.

(E) "Elevator" includes vertical wheelchair lifts, inclined wheelchair lifts, and inclined stairway chair lifts installed in any location, including a private, single-family dwelling for use by individuals with physical disabilities;

(10) "Escalator" means a power-driven, inclined, continuous stairway or runway used for raising or lowering passengers;

(11) "Freight elevator" means an elevator used for carrying freight and on which are permitted to ride only the operator and the persons necessary for loading and unloading and such other designated persons who may be authorized by the rules of the Elevator Safety Board;

(12) "New installation", "new elevator", "dumbwaiter", "escalator", or "new conveyance" means a complete elevator, dumbwaiter, escalator, or other conveyance installation, the application for the permit for the installation or relocation of which is filed on or after the effective date of application of the rules adopted by the board as provided in § 20-24-106(a)-(c). All other elevators, dumbwaiters, escalators, or other conveyances shall be deemed to be existing installations; and

(13) "Passenger elevator" means an elevator that is used to carry persons other than the operator and persons necessary for loading and unloading and such other designated persons who may be authorized by the rules of the board.

**History.** Acts 1963, No. 189, § 1; 1977, No. 539, § 1; A.S.A. 1947, § 82-1801; Acts 1991, No. 1069, § 1; 1997, No. 208, § 21; 2005, No. 1813, § 1; 2019, No. 315,

§ 2063; 2019, No. 389, §§ 41, 42; 2019, No. 910, §§ 5465, 5466.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in the first sentence of (12).

The 2019 amendment by No. 389 repealed (3), (5), and (6).

The 2019 amendment by No. 910 substituted "Division of Occupational and Professional Licensing Boards and Commissions" for "Department of Labor" in (2); and repealed (5) and (6).

## 20-24-103. Penalties — Prosecution of violations.

(a)(1) A person, owner, lessee, partnership, association, corporation, licensee, or inspector who violates this chapter or a rule adopted by the Elevator Safety Board is subject to a civil fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000) for each offense.

(2) Each day during which a violation continues shall be a separate offense.

(b) An action for recovery of the penalties provided by this section shall be instituted by the Division of Occupational and Professional Licensing Boards and Commissions or its authorized representative and shall be in the form of a civil action before a court of competent jurisdiction.

(c) In addition to the penalties in subsection (a) of this section, the Director of the Division of Occupational and Professional Licensing Boards and Commissions may petition a court of competent jurisdiction to enjoin or restrain violations of this chapter or a rule adopted by the board.

**History.** Acts 1963, No. 189, §§ 15, 16; 1977, No. 539, § 7; A.S.A. 1947, §§ 82-1815, 82-1816; Acts 1991, No. 1063, § 1; 2017, No. 968, § 1; 2019, No. 910, § 5467.

**Amendments.** The 2019 amendment substituted "Division of Occupational and Professional Licensing Boards and Commissions" for "Department of Labor" in (b) and (c).

## 20-24-104. Enforcement.

(a) Except when otherwise provided, the Division of Occupational and Professional Licensing Boards and Commissions shall have the power, and it shall be its duty, to enforce this chapter and the rules adopted by the Elevator Safety Board.

(b) In cities, towns, or other governmental subdivisions having a building department with qualified personnel to enforce this chapter or portions thereof, the Director of the Division of Occupational and Professional Licensing Boards and Commissions may delegate the building department as the authorized representative of the division to enforce and carry out the provisions of §§ 20-24-112 — 20-24-116 or any portion thereof as may be designated by him or her.

**History.** Acts 1963, No. 189, § 3; A.S.A. 1947, § 82-1803; Acts 2019, No. 315, § 2064; 2019, No. 910, § 5468.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a).

The 2019 amendment by No. 910 substituted "Division of Occupational and

Professional Licensing Boards and Commissions" for "Department of Labor" in (a) and twice in (b).

## 20-24-105. Elevator Safety Board — Creation — Members.

(a) There is created the Elevator Safety Board, consisting of six (6) members, one (1) of whom shall be the Secretary of the Department of Labor and Licensing, who shall serve continuously, and five (5) of whom shall be appointed by the Governor for terms of four (4) years.

(b) Upon the death, resignation, or incapacity of any member, the Governor shall fill the vacancy, for the remainder of the unexpired term, with a representative of the same interests as those of his or her predecessor.

(c) Of the five (5) members appointed by the Governor:

(1) One (1) shall be a representative of the owners and lessees of elevators within this state;

(2) One (1) shall be a representative of the manufacturers of elevators used within this state;

(3) One (1) shall be a representative of an insurance company authorized to insure the operation of elevators in this state;

(4) One (1) shall be a representative of the public at large; and

(5) One (1) shall be appointed by the Governor after consulting with the board of trustees of the Elevator Industry Work Preservation Fund and subject to confirmation by the Senate.

(d) The board shall meet at the call of the secretary who shall designate in the call the time and place of the meeting.

(e) The members except the secretary may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

**History.** Acts 1963, No. 189, § 2; A.S.A. 1947, § 82-1802; Acts 1997, No. 250, § 197; 2007, No. 1000, § 1; 2015, No. 1100, § 51; 2019, No. 910, §§ 5469, 5470.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Labor and Licensing" for "Director of the Department of Labor" in (a); and substituted "secretary" for "director" in (d) and (e).

## 20-24-106. Elevator Safety Board — Powers and duties.

(a) It shall be the duty of the Elevator Safety Board to license elevator inspectors, elevator mechanics, and elevator contractors as provided in this chapter and to revoke or suspend any such license for cause.

(b) The board shall have the power and it shall be its duty to consult with engineering authorities and organizations studying and developing standard safety codes, including that of the American National Standards Institute/American Society of Mechanical Engineers, and determine what rules governing the qualifications, training, and duties of elevator operators and the operation, maintenance, construction, alteration, and installation of elevators, dumbwaiters, and escalators and the inspection and tests of new and existing installations are

adequate, reasonable, and necessary to provide for the safety of life, limb, and property and to protect the public welfare.

(c) Upon the determination, the board shall make, amend, or repeal from time to time rules regarding:

(1) The maintenance, inspection, tests, and operation of all elevators and escalators;

(2) The construction of new elevators, dumbwaiters, and escalators;

(3) The alteration of existing elevators, dumbwaiters, and escalators;

(4) Prescribing minimum safety requirements for all existing elevators, dumbwaiters, and escalators;

(5) Prescribing the fees for construction permits, operating permits, acceptance inspections, initial inspections, and periodic inspections for new and existing elevators, escalators, and dumbwaiters; and

(6) The revocation, suspension, nonrenewal, and reinstatement of licenses and for the imposition of lesser disciplinary measures.

(d) The board shall also have the power in any particular case to grant exceptions and variations which shall only be granted when it is clearly evident that they are necessary in order to prevent undue hardship or when the existing conditions prevent compliance with the literal requirements of the rules. In no case shall any exception or variation be granted unless, in the opinion of the board, reasonable safety will be secured thereby.

(e) It shall also be the duty of the board to hear and decide any appeals from the orders or acts of the Department of Labor and Licensing or its authorized representative as provided in § 20-24-119.

**History.** Acts 1963, No. 189, § 2; A.S.A. 1947, § 82-1802; Acts 1991, No. 1063, § 2; 2005, No. 1813, § 2; 2017, No. 968, § 2; 2019, No. 315, §§ 2065, 2066; 2019, No. 910, § 5471.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b) and the first sentence of (d).

The 2019 amendment by No. 910 substituted "Department of Labor and Licensing" for "Department of Labor" in (e).

## 20-24-107. Elevator Safety Board — Adoption and amendment of rules.

(a)(1) A public hearing shall be held by the Elevator Safety Board before the adoption of any rules authorized by this chapter.

(2) Copies of such rules as are proposed by the board for adoption shall be made available to all interested parties at least thirty (30) days before the hearing.

(3) Notice of each hearing shall be published not less than fifteen (15) days before the date assigned for the hearing.

(4) The rules adopted by the board shall be effective and shall be applicable on and after the effective date specified by the board but in no case less than three (3) months after the adoption by the board.

(b) The rules adopted by the board shall be amended or repealed in the same manner in which they are adopted.

(c)(1) No amendment shall be made to the rules adopted by the board unless public hearings are held as provided in subsection (a) of this section.

(2)(A) Any person engaged in the inspection, alteration, construction, repair, or operation of elevators, dumbwaiters, or escalators, or any owner, insurer, or lessee thereof, may, from time to time, by written petition to the Secretary of the Department of Labor and Licensing, request that any rules adopted by the board under subsection (a) of this section be amended, or the secretary shall refer the petition to the board for its consideration and recommendation.

(B) The board shall hold public hearings with respect to the subject matter of the petition and shall thereafter approve or disapprove the petition.

(3) The amendments approved by the board shall become effective as provided in this section.

**History.** Acts 1963, No. 189, §§ 2, 13; 1965, No. 72, § 1; A.S.A. 1947, §§ 82-1802, 82-1813; Acts 2019, No. 315, §§ 2067-2070; 2019, No. 910, § 5472.

**Amendments.** The 2019 amendment by No. 315 deleted "or regulations" following "rules" in (a)(1); and deleted "and regulations" following "rules" throughout the section.

The 2019 amendment by No. 910, in (c)(2)(A), substituted "Secretary of the Department of Labor and Licensing" for "Director of the Department of Labor" and substituted "secretary" for "director".

## 20-24-108. Licenses required — Qualifications.

(a)(1) The inspections of conveyances required by this chapter shall be made by an elevator inspector licensed by the Elevator Safety Board.

(2) To be eligible for a license to inspect conveyances, the applicant or licensee shall:

(A) Have experience in designing, installing, maintaining, or inspecting conveyances to the extent established by rules of the board;

(B) Successfully pass a written examination approved by the board;

(C)(i) Submit with his or her application for a license or renewal of a license proof of an insurance policy:

*(a)* Issued by an insurance company authorized to do business in Arkansas; and

*(b)* Providing general liability coverage for at least one million dollars ($1,000,000) for injury or death of a person and five hundred thousand dollars ($500,000) for property damage.

(ii) The provision for liability insurance required by subdivision (a)(2)(C)(i) of this section shall not apply to elevator inspectors employed by the Division of Occupational and Professional Licensing Boards and Commissions; and

(D)(i) Have no financial interest in any business or operation which manufactures, installs, repairs, modifies, or services conveyances.

(ii) This qualification does not prohibit an employee of an insurance company insuring conveyances from obtaining a license as an elevator inspector.

(b)(1)(A) Unless working under the direct supervision of a licensed elevator contractor, no person shall:

(i) Erect, construct, alter, replace, maintain, remove, or dismantle any conveyance contained within a building or structure without an elevator mechanic license; or

(ii) Wire any conveyance from the mainline feeder terminals on the controller without an elevator mechanic license.

(B) A licensed elevator mechanic is not required for removing or dismantling a conveyance:

(i) Destroyed as the result of the complete demolition of a secured building or structure; or

(ii) When the demolition to the hoistway or wellway prevents access without endangerment.

(2) To be eligible for an elevator mechanic license, the applicant or licensee shall:

(A) Have three (3) years of verifiable work experience in constructing, maintaining, servicing, and repairing conveyances to the extent established by rules of the board;

(B) Successfully pass a written examination approved by the board; and

(C) Be currently employed by a licensed elevator contractor in the business of installing, constructing, altering, servicing, repairing, and maintaining conveyances.

(c)(1) Except as provided in subsections (a) and (b) of this section, no person other than an elevator contractor may install, construct, alter, service, repair, test, maintain, or perform electrical work on a conveyance.

(2) To be eligible for an elevator contractor license, the applicant or licensee shall:

(A) Have in his or her employment a properly licensed elevator mechanic; and

(B) Submit with his or her application for a license or renewal of a license proof of an insurance policy:

(i) Issued by an insurance company authorized to do business in Arkansas; and

(ii) Providing general liability coverage for at least one million dollars ($1,000,000) for injury or death of a person and five hundred thousand dollars ($500,000) for property damage.

**History.** Acts 1963, No. 189, § 11; 1977, No. 539, § 6; 1983, No. 284, § 6; A.S.A. 1947, § 82-1811; Acts 1991, No. 1063, § 3; 2005, No. 1813, § 3; 2017, No. 968, § 3; 2019, No. 315, §§ 2071, 2072; 2019, No. 910, § 5473.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulation" in (a)(2)(A) and (b)(2)(A).

The 2019 amendment by No. 910 substituted "Division of Occupational and Professional Licensing Boards and Commissions" for "Department of Labor" in (a)(2)(C)(ii).

**20-24-109. Application and examination for licenses — Issuance and renewal.**

(a)(1) A written application for the examination and license for elevator inspector, elevator mechanic, or elevator contractor shall be made upon a form to be supplied by the Elevator Safety Board upon request and shall be accompanied by a statement of the applicant's experience together with an examination fee not to exceed one hundred fifty dollars ($150).

(2) The examination shall be given not more than six (6) months from the date when the applicant makes the application.

(3)(A) If the applicant is qualified and successfully passes the applicable examination specified in this section, then upon payment of a license fee, he or she shall be entitled to:

(i) A one-year license as an elevator inspector or elevator contractor; or

(ii) A two-year license as an elevator mechanic.

(B) The license fee and the license renewal fee shall be established by the board, but in no event shall either fee exceed one thousand dollars ($1,000).

(4)(A) There shall be no limit to the number of times an applicant may seek a license as provided in this section, except that a rejected applicant may not make application within six (6) months from the date on which he or she is notified that he or she has failed to qualify.

(B) A license fee shall be paid for the initial examination and each subsequent examination.

(b) The board may license a person as an elevator inspector, elevator mechanic, or elevator contractor without examination if he or she holds an equivalent license for a state or city that has a standard of examination substantially equal to that provided for in § 20-24-108.

(c) The board shall renew a license after receiving:

(1) Payment of the license renewal fee; and

(2) Submission of proof that the licensee has satisfied the continuing education requirements established by rule of the board.

(d)(1) Whenever an emergency exists and the board determines that there are not enough licensed elevator mechanics to perform the work necessary to provide for the safety of life, limb, and property and to protect the public welfare, the board may waive the requirements of this chapter and issue an emergency elevator mechanic license that may be valid for no longer than thirty (30) days.

(2) Whenever the board determines that there are not enough licensed elevator mechanics available to perform work necessary for the completion of a project for which the Division of Occupational and Professional Licensing Boards and Commissions has issued a permit under § 20-24-115(d), the board may waive the requirements of this chapter and issue a temporary elevator mechanic license that may be valid for no longer than thirty (30) days.

(3) The board may renew an emergency or temporary license if the circumstances justifying its original issuance continue.

**History.** Acts 1963, No. 189, § 11; 1977, No. 539, § 6; 1983, No. 284, § 6; A.S.A. 1947, § 82-1811; Acts 1991, No. 1063, § 4; 2005, No. 1813, § 4; 2015, No. 1157, § 1; 2019, No. 315, § 2073; 2019, No. 910, § 5474.

**Amendments.** The 2019 amendment by No. 315 deleted "or regulation" following "rule" in (c)(2).

The 2019 amendment by No. 910 substituted "Division of Occupational and Professional Licensing Boards and Commissions" for "Department of Labor" in (d)(2).

## 20-24-110. Inspectors — Prohibited activities — Requirements.

(a) No elevator inspector shall inspect an elevator, escalator, or dumbwaiter if the inspector or any member of his or her immediate family has a financial interest in the building in which the elevator, escalator, or dumbwaiter is located or in any business which occupies the building in which the elevator, escalator, or dumbwaiter is located.

(b) No elevator inspector or any member of his or her immediate family shall have or maintain a financial interest in any business which manufactures, installs, repairs, alters, or services elevators, escalators, or dumbwaiters.

(c) No elevator inspector shall recommend or refer one (1) of his or her clients or customers to a specific business, firm, or corporation which manufactures, installs, repairs, alters, or services elevators, escalators, or dumbwaiters.

(d) On or before the last day of January of each year, all licensed elevator inspectors shall file with the Department of Labor and Licensing a financial disclosure statement on forms provided by the department and approved by the Elevator Safety Board. Such forms shall include, but not be limited to, the following:

(1) The name and address of any corporation, firm, or enterprise in which the person has a direct financial interest of a value in excess of one thousand dollars ($1,000). Policies of insurance issued to himself or herself or his or her spouse are not to be considered a financial interest;

(2) A list of every office or directorship held by himself or herself or his or her spouse, in any corporation, firm, or enterprise subject to the jurisdiction of the board;

(3) A list showing the name and address of any person, corporation, firm, or enterprise from which the person received compensation in excess of one thousand five hundred dollars ($1,500) during the preceding year; and

(4) A list showing the name and address of any person, corporation, firm, or enterprise from which the persons received compensation in excess of twelve thousand five hundred dollars ($12,500) during the preceding year.

**History.** Acts 1963, No. 189, § 11; 1977, No. 539, § 6; 1983, No. 284, § 6; A.S.A. 1947, § 82-1811; Acts 1991, No. 1063, § 5; 2019, No. 910, § 5475.

**Amendments.** The 2019 amendment substituted "Department of Labor and Licensing" for "Department of Labor" in the introductory language of (d).

**20-24-112. Testing and inspection required.**

(a) All new and existing elevators, dumbwaiters, and escalators, except dormant elevators, dumbwaiters, and escalators, shall be tested and inspected in accordance with the following schedule:

(1)(A) Every new or altered elevator, dumbwaiter, and escalator shall be inspected and tested in conformity with the applicable rules adopted by the Elevator Safety Board before the operating permit required by § 20-24-116 is issued.

(B) The inspections shall be made by a licensed elevator inspector in the employ of the Division of Occupational and Professional Licensing Boards and Commissions or its authorized representative;

(2)(A) The owner or lessee of every existing passenger elevator or escalator shall cause it to be inspected within three (3) months, and the owner or lessee of every existing freight elevator and dumbwaiter shall cause it to be inspected within six (6) months after the effective date of the rules adopted by the board under § 20-24-107(a) and (b).

(B) However, the division or its authorized representative, at its discretion, may extend the time specified in this subdivision (a)(2) for making inspections; and

(3)(A)(i) The owner or lessee shall cause an inspection of every elevator other than a temporary elevator and escalator to be made periodically every twelfth calendar month, and of every dumbwaiter and elevator driven by manual power every twelfth calendar month, following the month in which the initial inspection required by subdivisions (a)(1) and (2) of this section has been made.

(ii) However, an inspection under subdivision (a)(3)(A)(i) of this section may be made during the month following the calendar month during which the inspection is due.

(B) The board may approve by administrative rule a longer period between inspections for wheelchair lifts, moving walkways, and dumbwaiters.

(b)(1)(A) The inspections required by subdivisions (a)(2) and (3) of this section shall be made only by elevator inspectors who have been licensed in accordance with §§ 20-24-108 and 20-24-109.

(B) However, the elevator inspectors are not required to make any tests.

(2) Tests required by the rules to be made by the owner, the lessee, or the authorized agent of either shall be made by a licensed elevator mechanic in the presence of a licensed elevator inspector.

**History.** Acts 1963, No. 189, § 5; A.S.A. 1947, § 82-1805; 2017, No. 968, § 4; 2019, No. 910, § 5476.

**Amendments.** The 2019 amendment substituted "Division of Occupational and Professional Licensing Boards and Commissions" for "Department of Labor" in (a)(1)(B).

**20-24-113. Report of inspection.**

(a)(1) A report of every required inspection or safety test shall be filed with the Department of Labor and Licensing or its authorized repre-

sentative by the inspector making the inspection or witnessing the test on a form approved by the department or its authorized representative within thirty (30) days after the inspection or test has been completed.

(2) For the inspections required by § 20-24-112(a)(2), the report shall include all information required by the department in order to determine whether the owner or lessee of the elevator, escalator, or dumbwaiter has complied with rules adopted by the Elevator Safety Board under § 20-24-107(a) and (b) that are applicable.

(3) For the inspection required by § 20-24-112(a)(1), the report shall indicate whether the elevator, dumbwaiter, or escalator has been installed in accordance with the detailed plans and specifications approved by the department or its authorized representative under § 20-24-115(d) and (e) and meets the requirements of the applicable rules adopted by the board under § 20-24-107(a) and (b).

(b) If the report required by subsection (a) of this section is not filed within thirty (30) days after the final date when the elevator, dumbwaiter, or escalator should have been inspected as required by § 20-24-112(a)(2) or § 20-24-112(a)(3), the department shall designate a licensed inspector in its employ to make the inspection and report required by subsection (a) of this section.

(c)(1) For each inspection and report made at the direction of the department, the owner, lessee, or insurance company responsible for the report of inspection shall pay to the department a fee of three hundred fifty dollars ($350), unless otherwise provided by the board.

(2) The fee shall be paid directly to the department and shall be the only fees or charges for which the owner, lessee, or insurance company shall be liable for the inspection required by § 20-24-112(a).

**History.** Acts 1963, No. 189, § 5; 1965, No. 72, § 2; 1969, No. 337, § 1; 1977, No. 539, § 2; A.S.A. 1947, § 82-1805; Acts 2003, No. 360, § 1; 2017, No. 968, § 5; 2019, No. 910, § 5477.

**Amendments.** The 2019 amendment substituted "Department of Labor and Licensing" for "Department of Labor" in (a)(1).

### 20-24-114. Additional inspections.

In addition to required inspections, the Department of Labor and Licensing or its authorized representative may designate a licensed inspector in its employ to make such additional inspections as may be required to enforce this chapter and the rules adopted by the Elevator Safety Board under § 20-24-107(a) and (b).

**History.** Acts 1963, No. 189, § 5; 1969, No. 337, § 2; 1983, No. 284, § 1; A.S.A. 1947, § 82-1805; Acts 2017, No. 968, § 6; 2019, No. 910, § 5478.

**Amendments.** The 2019 amendment substituted "Department of Labor and Licensing" for "Department of Labor".

### 20-24-115. New construction, relocation, or alteration.

(a)(1) On and after the effective date of rules adopted by the Elevator Safety Board under § 20-24-107(a) and (b), detailed plans and specifi-

cations of the elevator, dumbwaiter, or escalator to be thereafter installed, relocated, or altered shall be submitted by the contractor, or in the absence of an installing contractor, by a person or the owner, to the Department of Labor and Licensing. An application for a construction or alteration permit on forms to be furnished or approved by the department shall be submitted at the same time.

(2) Repairs or replacements normally necessary for maintenance may be made on existing installations with parts equivalent in material, strength, and design to those replaced. No plans or specifications or applications need be filed for the repairs or replacements.

(b) All companies, owners, lessees, or persons engaged in this type of work within the State of Arkansas shall be approved and registered by the department.

(c) Failure to comply with subsection (a) or subsection (b) of this section subjects all to a penalty as described in § 20-24-103(a).

(d) A construction permit shall be issued by the department or its authorized representative to the installing contractor or, in his or her absence, the owner, for every new elevator, dumbwaiter, or escalator installation or alteration before the installation thereof is started. The department or its authorized representative shall issue the permit if the plans and specifications required under subsection (a) of this section indicate compliance with the applicable rules adopted by the board under § 20-24-107(a) and (b).

(e) Any person who installs an elevator, dumbwaiter, or escalator which does not meet the specifications of this chapter shall be liable for all expenses necessary to bring the elevator, dumbwaiter, or escalator into compliance with this chapter.

**History.** Acts 1963, No. 189, §§ 6, 7; 1965, No. 72, §§ 3, 4; 1977, No. 539, § 3; A.S.A. 1947, §§ 82-1806, 82-1807; Acts 2019, No. 315, §§ 2074, 2075; 2019, No. 910, § 5479.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in the first sentence of (a)(1) and the second sentence of (d).

The 2019 amendment by No. 910 substituted "Department of Labor and Licensing" for "Department of Labor" at the end of the first sentence of (a)(1).

## 20-24-116. Operating permits.

(a)(1) Operating permits shall be issued by the Department of Labor and Licensing within the time limits specified in this section to the owner or lessee of every new or altered elevator, dumbwaiter, and escalator and of every existing elevator, dumbwaiter, and escalator when the inspection report indicates compliance with the applicable sections of this chapter.

(2) No permits shall be issued if the fees required by § 20-24-117 have not been paid.

(3) The limits shall be thirty (30) days for existing elevators, dumbwaiters, and escalators and seven (7) days for new and altered elevators, dumbwaiters, and escalators after the required date for filing the inspection report required by § 20-24-113(a) unless time is extended by

the department. No elevator, dumbwaiter, or escalator shall be operated by the owner or lessee thereof after the dates specified in this section unless the operating permit has been issued.

(4)(A) The annual fee to be charged for the operating permit issued under this chapter shall be as follows:

300 lbs. — 500 lbs. Special personnel elevators plus

(i) Dumbwaiters ..... $30.00 annually

(ii) Elevators and wheelchair lifts ..... 50.00 annually

(iii) Escalators and moving walks ..... 85.00 annually

(B) A twenty-percent penalty may be assessed when the fee is past due by thirty (30) days.

(b)(1) The operating permit shall indicate the type of equipment for which it is issued and in the case of elevators shall state whether passenger or freight and shall also state the contract load and speed for the elevator, dumbwaiter, or escalator.

(2) The permit shall be posted conspicuously in the car of the elevator and on or near the dumbwaiter or escalator.

(3) The permit shall be extended by endorsement of the department or its authorized representative after each periodic inspection required by § 20-24-112(a)(3) and shall not be valid unless so endorsed.

(c)(1) If the inspection report required by § 20-24-113 indicates failure of compliance with the applicable rules approved by the Elevator Safety Board under § 20-24-107 or with the detailed plans and specifications approved by the department or its authorized representative under § 20-24-115(d) and (e), the department or its authorized representative shall give notice to the owner or lessee or the person filing plans and specifications of changes necessary for compliance with the rules. After the changes have been made, the department or its authorized representative shall issue an operating permit.

(2) If the inspection report required by § 20-24-113 indicates that an elevator, dumbwaiter, or escalator is in an unsafe condition, so that its continued operation may be dangerous to the public safety, then the department or its authorized representative, at its discretion, may require the owner or lessee to discontinue the use thereof until it has been made safe and in conformity with the rules of the board.

(d) If the department or its authorized representative has reason to believe that any owner or lessee to whom an operating permit has been issued is not complying with the applicable rules adopted by the board under § 20-24-107, it shall so notify the owner or lessee and shall give notice of a date for a hearing hereon to the owner or lessee. If after a hearing the department finds that the owner or lessee is not complying with the rules, it shall revoke the permit.

(e)(1) Pursuant to rules of the board, the department may issue a temporary certificate of operation for a period not to exceed ninety (90) days for new installations.

(2) The fee for a temporary certificate of operation shall be established by the board in an amount not to exceed one hundred dollars ($100).

(f) An application for a variance shall be submitted to the department with the fee established by the board in an amount not to exceed one hundred dollars ($100).

**History.** Acts 1963, No. 189, § 8; 1969, No. 337, § 3; 1977, No. 539, § 4; 1983, No. 284, § 2; A.S.A. 1947, § 82-1808; Acts 1993, No. 584, § 1; 2003, No. 360, §§ 2, 3; 2019, No. 315, §§ 2076, 2077; 2019, No. 910, § 5480.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" throughout (c) and (d); and substituted "rules" for "regulations" in (e)(1).

The 2019 amendment by No. 910 substituted "Department of Labor and Licensing" for "Department of Labor" in (a)(1).

## 20-24-117. Fees.

(a) The following fees shall be paid to the Department of Labor and Licensing for each passenger, freight, or one-man elevator or dumbwaiter installation permit:

(1) Elevators ..... $150.00
(2) Escalators and moving walks ..... 200.00
(3) Dumbwaiters ..... 100.00
(4) Wheelchair lifts ..... 100.00
(5) Workmen's hoists ..... 200.00

(b) A fee of not less than five dollars ($5.00) and not more than one hundred dollars ($100) shall be paid to the department for installation permits for all other types of elevators, escalators, power lifts, or moving walks.

(c) A final inspection fee and the fee for the initial operating permit are included in the installation permit fee. If a scheduled final inspection is cancelled without due notice to the department or if the elevator is not complete in the judgment of the inspector, an additional fee of one hundred dollars ($100) shall be charged to the elevator contractor for an additional final inspection.

(d) Major alterations may be made upon obtaining a permit, which requires payment of a fee of one hundred dollars ($100).

**History.** Acts 1963, No. 189, § 9; 1965, No. 72, § 5; 1969, No. 337, § 4; 1977, No. 539, § 5; 1983, No. 284, §§ 3-5; A.S.A. 1947, § 82-1809; Acts 1993, No. 584, § 2; 2003, No. 360, § 4; 2017, No. 968, § 7; 2019, No. 910, § 5481.

**Amendments.** The 2019 amendment substituted "Department of Labor and Licensing" for "Department of Labor" in the introductory language of (a).

## 20-24-119. Appeals.

(a) Any person aggrieved by an order or act of the Department of Labor and Licensing or its authorized representative under this chapter may, within fifteen (15) days after notice thereof, appeal from the order or act to the Elevator Safety Board, which shall, within thirty (30) days thereafter, hold a hearing of which at least fifteen (15) days' written notice shall be given to all interested parties.

(b) Within thirty (30) days after the hearing, the board shall issue an appropriate order modifying, approving, or disapproving the order or act.

(c) A copy of the order by the board shall be served upon all interested parties.

(d) Within thirty (30) days after any order or act of the board, any person aggrieved thereby may file a petition in the circuit court of the county in which the aggrieved person resides, for a review thereof.

(e) The court shall summarily hear the petition and may make any appropriate order or decree.

**History.** Acts 1963, No. 189, § 12; A.S.A. 1947, § 82-1812; Acts 2019, No. 910, § 5482.

**Amendments.** The 2019 amendment substituted "Department of Labor and Licensing" for "Department of Labor" in (a).

# CHAPTER 25

# ARKANSAS MANUFACTURED HOMES STANDARDS ACT



## 20-25-102. Definitions.

As used in this chapter:

(1) "Authorized representative" means any person or employee approved, certified, or hired by the Director of the Arkansas Manufactured Home Commission to perform inspection services;

(2) "Code" means standards adopted by the Arkansas Manufactured Home Commission;

(3) "Defect" means any defect in the performance, construction, components, or material of a manufactured home that renders the manufactured home or any part of the manufactured home unfit for the ordinary use for which the manufactured home was intended;

(4) [Repealed.]

(5) "Federal standards" means the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., and applicable regulations promulgated by the United States Department of Housing and Urban Development when and as adopted by the commission;

(6) "Installation" means work done to stabilize, support, or anchor a manufactured home or to join sections of a multisection manufactured home when any such work is governed by rules adopted by the commission;

(7) "Installer" means a person, firm, or corporation not otherwise certified who is engaged in the business of installing manufactured

homes for himself or herself or on behalf of any other person not certified under this chapter;

(8) "Label" means a label issued by the United States Department of Housing and Urban Development or its contract agency to be affixed onto the exterior of the manufactured home to assure compliance with the federal standards;

(9)(A) "Manufactured home" means a structure, transportable in one (1) or more sections, which in the traveling mode is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty square feet (320 sq. ft.) or more and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities.

(B) "Manufactured home" includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(C) "Manufactured home" shall include any structure which meets all the requirements of this subdivision (9) except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the federal standards;

(10) "Manufacturer" means any person, firm, or corporation that manufactures manufactured or modular homes;

(11) "Modular home" means a factory-built structure:

(A) Produced in accordance with state or local construction codes and standards; and

(B) Designed to be used as a dwelling unit with a foundation when connected to the required utilities;

(12) "Person" means an individual, partnership, corporation, or other legal entity; and

(13) "Retailer" means any person in the business of accepting on consignment, buying for resale, selling, or exchanging manufactured or modular homes or offering them to the public for sale, exchange, or lease-purchase, whether for himself or herself or on behalf of any other person not certified as a retailer under this chapter.

**History.** Acts 1977, No. 419, § 2; 1981, No. 533, § 2; 1985, No. 314, § 1; A.S.A. 1947, § 82-3016; Acts 2001, No. 1067, § 1; 2005, No. 1235, § 1; 2007, No. 1010, § 1; 2019, No. 315, § 2078; 2019, No. 389, § 43.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (6).

The 2019 amendment by No. 389 repealed (4).

## 20-25-104. Penalties.

(a) It shall be deemed a violation of this chapter:

(1) For any manufacturer or retailer of manufactured homes to fail to correct a code violation within a reasonable time, not to exceed ninety (90) days, of being ordered to do so in writing by an authorized representative of the Director of the Arkansas Manufactured Home

Commission if the manufacturer or retailer manufactured or sold the manufactured home after March 14, 1977; or

(2) For any person to interfere with, obstruct, or hinder any authorized representative of the Director of the Arkansas Manufactured Home Commission in the performance of his or her duty. In seeking to determine whether a manufacturer or retailer has violated this chapter, the Director of the Arkansas Manufactured Home Commission shall have full authority to convene hearings and issue orders pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., which is incorporated by reference.

(b) Any individual or director, officer, or agent of a corporation who knowingly violates this chapter in a manner that threatens the health or safety of any purchaser shall be deemed guilty of a misdemeanor. Upon conviction, the person shall be fined not more than one thousand dollars ($1,000) or imprisoned for not more than one (1) year, or both, for each violation.

(c)(1)(A) Whoever violates any provision of section 610 of Title VI of Pub. L. No. 93-383 or any regulation or final order issued pursuant to it shall be liable to the State of Arkansas for a civil penalty not to exceed one thousand dollars ($1,000) for each violation.

(B) Each violation of a provision of section 610 of Title VI of Pub. L. No. 93-383 or any regulation or order issued pursuant to it shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby. However, the maximum civil penalty shall not exceed one million dollars ($1,000,000) for any related series of violations occurring within one (1) year from the date of the first violation.

(2) Any individual or a director, officer, or agent of a corporation who knowingly violates section 610 of Title VI of Pub. L. No. 93-383 in a manner that threatens the health or safety of any purchaser shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one (1) year, or both.

(d)(1) If a manufactured home retailer or manufacturer violates any of the provisions of this chapter or any rules governing the manufactured home program, the retailer or manufacturer may be enjoined from selling any manufactured home until the retailer or manufacturer meets all the requirements of this chapter and rules promulgated pursuant to this chapter.

(2) If any manufactured home installer violates any provision of this chapter or any rule relating to the federal Manufactured Home Construction and Safety Standards, the installer shall be enjoined from installing manufactured homes until the violations are corrected.

(3) Whenever practicable, the Director of the Arkansas Manufactured Home Commission shall give notice to any person against whom an action for injunctive relief is contemplated and shall afford the person an opportunity to present his or her views, but the failure to give notice and afford an opportunity shall not preclude the granting of appropriate relief.

**History.** Acts 1977, No. 419, § 10; 1981, No. 533, § 10; 1983, No. 416, § 1; A.S.A. 1947, § 82-3024; Acts 2001, No. 1067, § 2; 2007, No. 827, § 166; 2019, No. 315, § 2079.

**Amendments.** The 2019 amendment, in (d)(1), deleted "or regulations" following the first occurrence of "rules" and deleted "and regulations" following the second occurrence of "rules"; and deleted "or regulation" following "rule" in (d)(2).

## 20-25-106. Arkansas Manufactured Home Commission — Powers and duties.

(a)(1) The Arkansas Manufactured Home Commission by rule shall set uniform, reasonable standards for the proper:

(A)(i) Initial installation of new manufactured homes installed in this state.

(ii) The installation standards under subdivision (a)(1)(A)(i) of this section shall equal or exceed installation standards promulgated under the federal standards; and

(B) Secondary installation of used manufactured homes installed in this state.

(2) The commission by rule shall set the requirements for and require:

(A) Licensing and certification of manufacturers of manufactured homes or modular homes in this state and manufacturers of manufactured homes or modular homes in other states selling them in this state;

(B) Licensing and certification of any retailer, salesperson, and others engaged in the sale of manufactured homes or modular homes for sale in this state; and

(C) Licensing, training, and certification of any installer engaged in the installation of manufactured homes or modular homes in this state.

(b) The commission shall require bonding or other reasonable methods to assure that manufacturers, retailers, installers, and others licensed or certified under this chapter will be financially responsible to fully comply with the code.

(c)(1) The commission shall by rule establish procedures for the investigation and timely resolution of:

(A) Construction or installation defects in manufactured homes that are reported to the commission during the one-year period beginning on the date of installation of the manufactured home, including:

(i) Violations of the federal standards; and

(ii) Violations of the rules governing the installation of manufactured homes promulgated by the commission; and

(B) Disputes among manufacturers, retailers, and installers of manufactured homes regarding responsibility for the correction or repair of construction or installation defects in manufactured homes that are reported to the commission during the one-year period beginning on the date of installation of the manufactured home.

(2) The commission shall by rule establish procedures for the timely inspection and certification of a percentage of the initial installations of new manufactured homes installed in the state on a sample basis to assure compliance with installation standards adopted by the commission and to comply with requirements set forth by the United States Department of Housing and Urban Development.

(3) The investigations, required corrections, and remedial actions shall be handled in accordance with the code or the rules promulgated under the code.

(d)(1) The commission or subcommittee of the commission shall convene hearings and issue orders in cases of violations of this chapter or of the code or the rules promulgated by the commission.

(2) The commission or subcommittee of the commission shall convene hearings, and the commission shall issue orders on appeals of determinations of responsibility for the correction of defects by manufacturers, retailers, and the Director of the Arkansas Manufactured Home Commission and his or her staff.

(e) The commission shall delegate its authority, except the authority to adopt standards and rules, to the director.

(f) The commission shall have the power to suspend, revoke, or refuse to renew the license or certification under this chapter of any person who is found to have been guilty of:

(1) Fraud, misrepresentation, or deception in obtaining a license or certification;

(2) Accepting a manufactured or modular home, directly or indirectly, from a manufacturer not certified by the state pursuant to this chapter;

(3) Selling or delivering, directly or indirectly, a manufactured or modular home to a retailer not certified by the state pursuant to this chapter; or

(4) Violating any provision of this chapter or rules promulgated under this chapter.

(g)(1) In lieu of suspension, revocation, or refusal to renew a license certification, the commission shall have the authority to impose a monetary penalty and may suspend, refuse to renew, or revoke the license or certification until the penalty is paid to the commission. The penalty shall be imposed only if the commission formally finds that the public welfare would not be impaired by the imposition of a monetary penalty rather than suspension, refusal to renew, or revocation and that payment of the monetary penalty should achieve the desired disciplinary purpose.

(2) No monetary penalty imposed by the commission shall exceed one thousand dollars ($1,000) per violation. Each separate transaction shall constitute a separate violation.

(3) The commission shall not impose a civil penalty upon any person whose license or certification is suspended, revoked, or not renewed under this section.

(h) Regarding any violation of this chapter or the Arkansas Manufactured Home Recovery Act, § 20-29-101 et seq., the commission shall

have the power to issue subpoenas and bring before the commission as a witness any person in the state and may require the witness to bring with him or her any book, writing, or other thing under his or her control which he or she is bound by law to produce in evidence.

(i) The commission shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of any penalty not paid within thirty (30) days of service of the order assessing the monetary penalty unless a court enters a stay pursuant to this section.

(j) All hearings and appeals therefrom under this section shall be pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(k) The commission may require manufacturers, distributors, and retailers in this state to make reports as it deems necessary. The reports shall be filed with the director.

(l) No license or certification shall be transferred or assigned to any other person.

(m)(1)(A) The commission shall have the authority to file suit in the Pulaski County Circuit Court to enjoin any manufacturer, retailer, or installer from doing business in this state without having first secured the required license or certification, or both.

(B) The commission shall have the authority to collect from the manufacturer, retailer, or installer all fees and assessments which the commission would have collected had the manufacturer, retailer, or installer secured the required license or certification, or both.

(2) The commission shall have the authority to impose a monetary penalty not to exceed one thousand dollars ($1,000) per violation by an unlicensed manufacturer, retailer, or installer of any provision of this chapter or of the rules promulgated under this chapter.

(n) The commission shall adopt rules, issue orders, and otherwise act as necessary to:

(1) Comply with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. § 5414; and

(2) Provide for the effective enforcement of all the Manufactured Home Construction and Safety Standards, 24 C.F.R. § 3280.1 et seq., in order to have the state plan authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., approved by the United States Secretary of Housing and Urban Development.

**History.** Acts 1977, No. 419, §§ 7, 12; 1981, No. 533, §§ 7, 12; 1983, No. 416, § 2; 1985, No. 314, § 2; A.S.A. 1947, §§ 82-3021, 82-3026; Acts 1991, No. 632, § 1; 2001, No. 1067, § 3; 2005, No. 1235, §§ 2, 3; 2007, No. 1010, § 2; 2011, No. 346, § 1; 2019, No. 315, §§ 2080-2086.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" throughout the section; substituted "rule"

for "regulation" throughout (a) and (c); substituted "standards and rules" for "standards, rules, and regulations" in (e); and deleted "or regulations" following "rules" in (f)(4).

### 20-25-107. Administration by Director of the Arkansas Manufactured Home Commission.

(a) The Director of the Arkansas Manufactured Home Commission shall be appointed by the Arkansas Manufactured Home Commission.

(b) The director shall administer the code for manufactured homes and the rules promulgated by the commission.

(c)(1) The director shall establish an inspection system sufficient to ensure compliance with the code by providing for inspections by members of his or her own inspection staff or by authorized representatives certified by the commission.

(2) The director and his or her staff shall have the right to enter and inspect all factories, warehouses, or establishments in which manufactured or modular homes are manufactured.

(d) With the approval of the commission, the director shall:

(1) Establish reasonable fees for certification, including licensing of manufactured or modular home salespersons and setting up, installing, and anchoring manufactured homes; and

(2) Establish monitoring inspection fees in accordance with the guidelines established by the United States Secretary of Housing and Urban Development and provide for participation in the fee distribution system set out in 24 C.F.R. § 3282.307.

(e) Within the limits of appropriation, the director may appoint such employees as he or she may deem necessary for the administration of this chapter.

**History.** Acts 1977, No. 419, § 7; 1981, No. 533, § 7; A.S.A. 1947, § 82-3021; Acts 2005, No. 1235, § 4; 2007, No. 1010, § 2; 2019, No. 315, § 2087.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (b).

## CHAPTER 26

## PUBLIC LODGING

SUBCHAPTER.



### Subchapter 2 — Registration of Guests

SECTION.

### 20-26-202. State Board of Health — Duties.

The State Board of Health shall make necessary rules relating to tourist camps, hotels, or rooming houses not in conflict with any provision of this subchapter in order that:

(1) The health and safety of guests may be protected; and

(2) Tourist camps, hotels, or rooming houses may be operated in a lawful manner.

**History.** Acts 1945, No. 110, § 3; A.S.A. 1947, § 71-1103; Acts 2019, No. 315, § 2088.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in the introductory language.

### 20-26-205. Enforcement.

The Department of Health and the Division of Arkansas State Police are required to assist in the enforcement of this subchapter and of any rules promulgated by the State Board of Health relating to tourist camps, hotels, and rooming houses.

**History.** Acts 1945, No. 110, § 4; A.S.A. 1947, § 71-1104; Acts 2019, No. 315, § 2089.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules".

## CHAPTER 27

## MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

SUBCHAPTER.



### Subchapter 2 — Bedding

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Ar-

kansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-27-208. Reuse of mattresses from hospitals, hotels, etc., prohibited — Exception.

**Publisher's Notes.** Section 20-27-209, referred to in this section, was repealed by Acts 2019, No. 910, § 5028, effective July 1, 2019.

## 20-27-209. [Repealed.]

**Publisher's Notes.** This section, concerning sterilization of renovated and remade bedding, was repealed by Acts 2019, No. 910, § 5028, effective July 1, 2019. The section was derived from Acts 1927, No. 249, § 4; Pope's Dig., § 6458; A.S.A. 1947, § 82-719.

## 20-27-210. Regulation of sterilization by State Board of Health.

(a) It is made the duty of the State Board of Health to promulgate and publish rules prescribing the method of sterilization that may be used by those engaged in the manufacturing of mattresses and bedding or in the renovation thereof.

(b) All persons, firms, or corporations who shall conform to the rules as promulgated by the board, as directed, shall be deemed as complying with the law.

**History.** Acts 1927, No. 249, § 12; Pope's Dig., § 6466; A.S.A. 1947, § 82-727; Acts 2019, No. 315, § 2090.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (a); and substituted "rules" for "regulations" in (b).

### Subchapter 6 — Lead Poisoning Prevention

SECTION.
20-27-602. Definitions.
20-27-603. Political subdivision laws permitted.
20-27-604. Injunction.
20-27-605. Lead Poisoning Prevention and Control Agency — Director.
20-27-606. Search warrant required for inspection — Exception.
20-27-607. Notification of hazard — Abatement.

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-27-602. Definitions.

As used in this subchapter:

(1) [Repealed.]

(2) [Repealed.]

(3) [Repealed.]

(4) "Dwelling" means a structure, all or part of which is designed or used for or in connection with human habitation, including garages, carports, sheds, fences, and gates;

(5) "Dwelling unit" means any room, group of rooms, or other interior area of a structure designed or used for human habitation;

(6) "Exposed surface" means all interior surfaces of a dwelling or dwelling unit and those exterior surfaces which are readily accessible to children under six (6) years of age, such as stairs, porches, railings, windows, doors, facings, sills, and siding;

(7) "Lead-bearing substance" means any paint, lacquer, glaze, or other applied surface coatings, putty, plaster, structural material, or similar substance which contains more than five-tenths of one percent (0.5%) lead metal by weight in the total nonvolatile contents of the substance, or any such substance containing an amount of lead metal not to exceed five-tenths of one percent (0.5%) as hereafter may be established by federal law or regulation;

(8) "Occupant" or "tenant" means any person living, sleeping, cooking, eating in, or having actual possession of a dwelling or dwelling unit;

(9) "Owner" means any person who alone, jointly, or severally with others has legal title to, charge, care, or control of any dwelling or dwelling unit as owner, as agent of the owner, or as executor, administrator, trustee, or guardian of the estate of the owner; and

(10) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision, or combination thereof or any agent or representative of the foregoing.

**History.** Acts 1979, No. 896, § 2; A.S.A. 1947, § 82-738; Acts 2019, No. 389, § 44; 2019, No. 910, § 5029.

**Amendments.** The 2019 amendment

by No. 389 repealed (1) through (3).

The 2019 amendment by No. 910 repealed (3).

## 20-27-603. Political subdivision laws permitted.

This subchapter shall not prohibit any political subdivision from enacting and enforcing ordinances or laws for the prevention and control of lead poisoning which provide the same or more restrictive provisions as this subchapter or the rules promulgated pursuant to this subchapter.

**History.** Acts 1979, No. 896, § 8; A.S.A. 1947, § 82-744; Acts 2019, No. 315, § 2091.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules".

## 20-27-604. Injunction.

When in the judgment of the Department of Health any person has engaged in or is about to engage in any acts or practices of commission or omission which constitute or will constitute a violation of any provision of this subchapter or any rule or order issued under this subchapter, the Attorney General, upon written notice thereof by the department, shall make application to the court of competent jurisdiction for an order enjoining the acts or practices or for an order directing compliance. Upon a showing by the department that the person has engaged in or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

**History.** Acts 1979, No. 896, § 7; A.S.A. 1947, § 82-743; Acts 2019, No. 315, § 2092.

**Amendments.** The 2019 amendment deleted "regulation" following "rule" in the first sentence.

## 20-27-605. Lead Poisoning Prevention and Control Agency — Director.

(a) The Department of Health is designated as the Lead Poisoning Prevention and Control Agency.

(b) The Secretary of the Department of Health shall perform the functions vested in the department pursuant to this subchapter.

(c) In discharging its function in lead poisoning prevention and control, the department may:

(1) Develop a screening program to identify children under six (6) years of age with lead poisoning or potential lead poisoning;

(2) Report immediately all actual or suspected cases of lead poisoning found in the screening program to the parent or legal guardian;

(3) Follow up the positive screening results by referring children with extremely high blood lead levels for clinical evaluations or treatment and retest children with minimal elevated levels within three (3) months;

(4) Investigate the lead hazard in the places of residence and frequent occupancy of children with elevated blood lead readings;

(5) Notify the owner and occupant in writing of the lead hazard and, if necessary and after a hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., require discontinuance within thirty (30) days of a paint condition conducive to lead poisoning in any designated dwelling;

(6) Prescribe in written notice to the owner and the occupant the method of discontinuance of the lead paint condition conducive to lead poisoning;

(7) Advise, consult, and cooperate with other agencies of the state, the United States Government, municipal agencies, other state and interstate agencies, political subdivisions, and other private or public groups concerned with the prevention and control of lead poisoning;

(8) Collect and disseminate information relating to the prevention and control of lead poisoning;

(9) Formulate, adopt, promulgate, amend, and repeal rules for the prevention and control of lead poisoning; and

(10) Issue such orders or modifications thereof as may be necessary in connection with proceedings under this subchapter.

**History.** Acts 1979, No. 896, § 3; A.S.A. 1947, § 82-739; Acts 2019, No. 315, § 2093; 2019, No. 910, § 5030.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (c)(9).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (b).

## 20-27-606. Search warrant required for inspection — Exception.

(a) For reasonable cause, the Secretary of the Department of Health may obtain from any court of record in the county where a dwelling or other property is located a search warrant permitting the secretary's designee to enter at all reasonable times upon any private or public property, including dwellings or dwelling units. Entry may be made for the purpose of determining whether or not a lead poisoning hazard or potential hazard exists, including the collection of samples of laboratory analyses, and to determine abatement compliance. However, entry onto or into any property under the jurisdiction and control of the United States Government shall be effected only with the concurrence of the United States Government or its designated representative.

(b) Entry without a warrant may be made by an agent of the Department of Health if he or she reasonably believes that exigent circumstances exist posing a clear threat to the health of any person.

**History.** Acts 1979, No. 896, § 4; A.S.A. 1947, § 82-740; Acts 2019, No. 910, § 5031.

**Amendments.** The 2019 amendment, in the first sentence of (a), substituted "Secretary of the Department of Health" for "Director of the Department of Health" and substituted "secretary's" for "director's".

## 20-27-607. Notification of hazard — Abatement.

(a) After completion of an inspection or investigation, the Secretary of the Department of Health or his or her designee shall notify the owner and tenant of his or her findings and, in the event any lead hazard was found, the notification shall contain instructions pertaining to abatement as prescribed by this subchapter and rules promulgated pursuant to this subchapter.

(b) If the lead hazard has not been properly abated within thirty (30) days after receipt of notification, the owner shall be in violation of this subchapter.

**History.** Acts 1979, No. 896, § 5; A.S.A. 1947, § 82-741; Acts 2019, No. 315, § 2094; 2019, No. 910, § 5032.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a).

## Subchapter 8 — Refrigerators, Iceboxes, etc.

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-27-801. Unlawful to leave unattended — Exception.

(a)(1) It shall be unlawful for any person, firm, or corporation to leave or permit to remain outside of any dwelling, building, or other structure or within any unoccupied or abandoned building, dwelling, or other structure under his, her, or its control in a place accessible to children any abandoned, unattended, or discarded icebox, refrigerator, or other container that has an airtight door or lid, snaplock, or other locking device that may not be released from the inside without first

removing the door or lid, snaplock, or other locking device from the icebox, refrigerator, or container.

(2) This subchapter shall not apply to reefers, refrigerator, or icer cars of any railroad or railway express agency or any other refrigerator vehicles unless the vehicles have been abandoned or discarded.

(b)(1) The Labor Safety Administrator of the Division of Labor or any of his or her deputies or inspectors shall have the right to remove the door hinges or to dismantle, if necessary, any icebox, refrigerator, or other container that has an airtight door or lid, snaplock, or other locking device that violates this subchapter.

(2) The administrator or any of his or her deputies or inspectors shall have the right to enter any junkyard, vacant lot, dump, yard, unoccupied or abandoned building, dwelling, or other structure or place frequented by children in order to perform duties pursuant to this section.

(c)(1) Any person, firm, or corporation that is found guilty of a violation of this section shall be guilty of a violation and upon conviction subject to a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100) for each violation.

(2) Each icebox, refrigerator, or other container abandoned in a condition contrary to this section shall be deemed a separate offense.

**History.** Acts 1957, No. 347, § 1; 1965, No. 44, § 1; A.S.A. 1947, § 82-730; Acts 2005, No. 1994, § 126; 2019, No. 910, § 5483.

**Amendments.** The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (b)(1).

## 20-27-802. Inside door handles required on certain walk-in refrigerators, etc.

The Labor Safety Administrator of the Division of Labor or any of his or her deputies or inspectors may require the installation of inside door handles on any walk-in refrigerator, icebox, freezer, or door of a cold storage room where in his or her discretion the absence of inside door handles in the freezing unit may endanger the life of any employee or other authorized personnel using the unit.

**History.** Acts 1957, No. 347, § 2; A.S.A. 1947, § 82-731; Acts 2019, No. 910, § 5484.

**Amendments.** The 2019 amendment substituted "Division of Labor" for "Department of Labor".

### Subchapter 9 — Safety Glazing Materials

SECTION.
20-27-901. Definitions.

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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act estab-

lishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-27-901. Definitions.

As used in this subchapter:

(1) "Fabricator" means a person who fabricates, assembles, or glazes from component parts such structures or products commonly known as sliding glass doors, entrance doors, adjacent fixed glazed panels, storm doors, shower doors, bathtub enclosures, panels to be fixed glazed, entrance doors, or other structures to be glazed, to be used or installed in hazardous locations;

(2)(A) "Hazardous locations" means those areas in residential, commercial, and public buildings where the use of other than safety glazing materials would constitute a hazard as the Director of the Division of Labor may determine after notice and hearings as are now required by law.

(B) "Hazardous locations" shall specifically include those installations, glazed or unglazed, known as sliding glass doors, framed or unframed glass doors, and adjacent fixed glazed panels which may be mistaken for a means of ingress or egress, storm doors, shower doors, and tub enclosures whether or not the glazing in the doors, panels, or enclosures is transparent;

(3) "Installer" means those persons or concerns who or which install glazing materials or build structures containing glazing materials in hazardous locations;

(4) "Manufacturer" means a person who manufactures safety glazing material; and

(5) "Safety glazing material" means any glazing material, such as tempered glass, laminated glass, wire glass, or rigid plastic, which meets the test requirements of the American National Standards Institute Standard Z-97.1 — 1972 and which is so constructed, treated, or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with glazing material.

**History.** Acts 1973, No. 117, § 1; A.S.A. 1947, § 82-732; Acts 2019, No. 910, § 5485.

**Amendments.** The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (2)(A).

## Subchapter 10 — Removal of Asbestos Material



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-27-1001. Purpose.

The purpose of this subchapter is to protect the public health and safety and the environment and to qualify the Division of Environmental Quality to adopt, administer, and enforce a program for licensing training providers involved with the training of regulated asbestos professionals, for licensing asbestos abatement consultants and asbestos abatement contractors, and for certifying air monitors, contractor-supervisors, inspectors, management planners, project designers, and workers involved with demolitions, renovations, and asbestos-response actions in which regulated asbestos-containing materials are disturbed in accordance with this subchapter, the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., and rules issued pursuant thereto.

**History.** Acts 1985, No. 394, § 1; A.S.A. 1947, § 82-1944; Acts 1987, No. 531, § 1; 1993, No. 817, § 1; 1997, No. 308, § 1; 1999, No. 1164, § 174; 2019, No. 315, § 2095; 2019, No. 910, § 3210.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations".

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

## 20-27-1002. Penalties.

(a) Any person who violates any provision of this subchapter or commits any unlawful act thereunder or who violates any rule or order of the Arkansas Pollution Control and Ecology Commission shall be subject to the penalty provisions provided in § 8-4-103.

(b) All moneys collected as civil penalties shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

**History.** Acts 1985, No. 394, § 7; A.S.A. 1947, § 82-1950; Acts 1993, No. 817, § 6; 1999, No. 142, § 1; 2005, No. 1824, § 19; 2019, No. 315, § 2096.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (a).

## 20-27-1003. Definitions.

As used in this subchapter:

(1) "Air monitor" means any person who collects airborne samples for analysis of asbestos fibers;

(2) "Asbestos abatement consultant" means any person or other legal entity, however organized, that acts as an agent for the owner or operator in performing demolitions, renovations, or response actions which will involve, or may involve, the removal or disturbance of asbestos-containing materials in any facility;

(3) "Asbestos abatement contractor" means any person or other legal entity, however organized, that acts as an agent for the owner or operator in performing demolitions, renovations, or response actions which will involve, or may involve, the removal or disturbance of asbestos-containing materials in any facility;

(4) "Category I nonfriable asbestos-containing material" means asbestos-containing packings, gaskets, resilient floor coverings, and asphalt roofing products containing more than one percent (1%) asbestos as determined using the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy;

(5) "Category II nonfriable asbestos-containing material" means any material excluding Category I nonfriable asbestos-containing materials containing more than one percent (1%) asbestos as determined using the methods specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy, that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure;

(6) "Certificate" means a document issued by the Division of Environmental Quality to any person certifying that that person has satisfactorily completed asbestos training, examination, and other requirements established by the division to perform the duties of the following:

(A) Air monitor;

(B) Contractor/supervisor;

(C) Inspector;

(D) Management planner;

(E) Project designer; and

(F) Worker;

(7) "Contractor/supervisor" means any person who supervises the following activities with respect to friable asbestos-containing material in a facility:

(A) A response action other than a small-scale short-duration activity;

(B) A maintenance activity that disturbs friable asbestos-containing material other than a small-scale short-duration activity; or

(C) A response action for a major fiber-release episode;

(8) "Demolition" means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or intentional burning of a facility;

(9) [Repealed.]

(10) [Repealed.]

(11) "Eligible structure" means a structure that:

(A) Contains friable asbestos materials;

(B) Unexpectedly collapses, is at imminent risk of collapse, or fails in its structural integrity; and

(C) Is not a single or multifamily dwelling;

(12)(A) "Facility" means:

(i) Any institutional, commercial, public, industrial, or residential structure, installation, or building, including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative but excluding residential buildings having four (4) or fewer dwelling units;

(ii) Any ship; and

(iii) Any active or inactive waste disposal site.

(B) For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to this rule is not excluded, regardless of its current use or function;

(13) "Friable asbestos materials" means any materials containing more than one percent (1%) asbestos as determined by using the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy, that when dry can be crumbled, pulverized, or reduced to powder by hand pressure;

(14) "Inspector" means any person who inspects for asbestos-containing material in a facility;

(15) "License" means a document issued by the division to an asbestos abatement contractor, asbestos abatement consultant, or training provider who meets the criteria for licensing as established by the division;

(16) "Management planner" means any person who prepares management plans for a school;

(17) "Nonfriable asbestos-containing material" means any material containing more than one percent (1%) of asbestos as determined using

the method specified in Appendix E, Subpart E, 40 C.F.R. Part 763, Section 1, Polarized Light Microscopy, that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure;

(18) "Owner or operator" means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both;

(19) "Project designer" means any person who designs the following activities with respect to friable asbestos-containing material in a facility:

(A) A response action other than a small-scale short-duration activity;

(B) A maintenance activity that disturbs friable asbestos-containing material other than a small-scale short-duration activity; or

(C) Response action for a major fiber-release episode;

(20) "Regulated asbestos-containing material" means:

(A) Friable asbestos material;

(B) Category I nonfriable asbestos-containing material that has become friable;

(C) Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading; or

(D) Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subchapter;

(21) "Renovation" means altering a facility or one (1) or more facility components in any way, including the stripping or removal of regulated asbestos-containing material from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions;

(22) "Response action" means a method, including removal, encapsulation, enclosure, repair, and operation and maintenance, that protects human health and the environment from friable asbestos-containing material;

(23) "Stabilization and abatement activity" means an activity relating to the abatement of friable asbestos materials in an eligible structure, including without limitation inspection, removal, site stabilization, and remediation;

(24) "Training provider" means any person or other legal entity, however organized, that conducts some or all of the training programs for asbestos professional disciplines which are regulated by the division; and

(25) "Worker" means any person who carries out any of the following activities with respect to friable asbestos-containing material in a facility:

(A) A response action other than a small-scale short-duration activity;

(B) A maintenance activity that disturbs friable asbestos-containing material other than a small-scale short-duration activity; or

(C) A response action for a major fiber-release episode.

**History.** Acts 1985, No. 394, § 2; A.S.A. 1947, § 82-1945; Acts 1987, No. 531, § 2; 1993, No. 817, § 2; 1997, No. 308, § 1; 1999, No. 1164, § 175; 2013, No. 489, § 2; 2017, No. 456, § 1; 2019, No. 315, § 2097; 2019, No. 389, § 45; 2019, No. 910, §§ 3211-3214.

**Amendments.** The 2019 amendment by No. 315 substituted "rule" for "regulation" in (12)(B).

The 2019 amendment by No. 389 repealed (9) and (10).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" and "division" for "department" in the introductory language of (6), in (15) twice, and in (24); and repealed (9) and (10).

## 20-27-1004. Powers and duties of Division of Environmental Quality.

The Division of Environmental Quality shall be charged with the responsibility of administering and enforcing this subchapter and is given and charged with the following powers and duties:

(1) To require and regulate training and examinations for all disciplines certified by this subchapter and the rules promulgated pursuant to this subchapter;

(2) To establish standards and procedures for the licensing of consultants, contractors, and training providers and to establish performance standards for the abatement of friable and nonfriable asbestos materials. The performance standards shall be as stringent as those standards adopted by the United States Environmental Protection Agency pursuant to section 112 of the Clean Air Act, 42 U.S.C. § 7401 et seq.;

(3) To enforce rules necessary or appropriate to the implementation of this subchapter, including taking legal action in any court of competent jurisdiction;

(4) To issue licenses and certificates to all applicants who satisfy the requirements of this subchapter and any rules issued pursuant to this subchapter, to renew the licenses and certificates, and to suspend or revoke the licenses and certificates for cause and after notice and opportunity for hearing;

(5) To establish annual license fees for asbestos abatement consultants, asbestos abatement contractors, and training providers, annual certification fees for air monitors, contractor/supervisors, inspectors, management planners, project designers, and workers in order to recover the costs of processing license and certificate applications and the issuance of licenses and certificates, and such other fees as are necessary to recover the costs of enforcing this subchapter; and

(6) To expend necessary funds from the Asbestos Control Fund to develop and administer the Asbestos Abatement Grant Program.

**History.** Acts 1985, No. 394, § 3; A.S.A. 1947, § 82-1946; Acts 1987, No. 531, § 3; 1993, No. 817, § 3; 1997, No. 308, § 1; 1997, No. 309, § 2; 2013, No. 489, § 3;

2019, No. 315, §§ 2098, 2099; 2019, No. 910, § 3215.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (1), (3), and (4).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language.

## 20-27-1005. Procedures.

The procedures of the Division of Environmental Quality and the Arkansas Pollution Control and Ecology Commission for issuance of rules, conduct of hearings, notice, power of subpoena, review of action on licenses, right of appeal, presumptions, finality of actions, and related matters shall be as provided in the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., including, but not limited to, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

**History.** Acts 1985, No. 394, § 4; A.S.A. 1947, § 82-1947; Acts 2019, No. 315, § 2100; 2019, No. 910, § 3216.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules".

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality".

## 20-27-1006. License required — Exceptions.

(a) Any asbestos abatement consultant or asbestos abatement contractor shall obtain a license under this section from the Division of Environmental Quality before actively engaging in any asbestos demolition, renovation, or asbestos response action, and any training provider shall obtain a license under this section from the division before actively engaging in any asbestos training as provided by this subchapter.

(b)(1) The application for license shall be made in the manner and form required by the division. An application for license or renewal of a license shall be accompanied by proof of liability insurance coverage in the form and amount required by the division and proof of training and examination as required by the division.

(2) Training providers shall not be required to furnish proof of liability insurance coverage under subdivision (b)(1) of this section.

(c)(1) The division shall license all applicants for licenses under this subchapter who satisfy the requirements of this subchapter.

(2) Licenses shall be valid for a period of one (1) year.

(3) Licenses shall be renewable upon application and upon satisfying the renewal requirements of the division.

(d) State and federal governments and subdivisions thereof shall be exempt, except for training providers, from the license requirements of this section.

**History.** Acts 1985, No. 394, § 5; A.S.A. 1947, § 82-1948; Acts 1987, No. 531, § 4; 1993, No. 817, § 4; 1997, No. 308, § 1; 2019, No. 910, § 3217.

**Amendments.** The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a); and substi-

tuted "division" for "department" throughout the section.

### 20-27-1007. Prohibitions.

It shall be unlawful for any person:

(1) To conduct:

(A) Asbestos response actions, demolitions, or renovations without having first obtained a license from the Division of Environmental Quality when acting as an asbestos abatement consultant or as an asbestos abatement contractor;

(B) Training without having first obtained a license from the division when acting as an asbestos training provider; or

(C) Asbestos response actions, demolitions, or renovations without having first obtained certification from the division when acting as a clearance air monitor, contractor/supervisor, inspector, management planner, project designer, or worker;

(2) To participate in any response action, demolition, or renovation contrary to the rules or orders issued under this subchapter or contrary to the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., and the Arkansas Solid Waste Management Act, § 8-6-201 et seq., and the rules promulgated thereunder, whether or not such person is required to have a license or certificate pursuant to this subchapter;

(3) To knowingly make any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this subchapter or rules adopted pursuant to this subchapter or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this subchapter or any rules adopted pursuant to this subchapter; or

(4) To violate any provision of this subchapter or any rule or order adopted or issued under this subchapter.

**History.** Acts 1985, No. 394, § 6; A.S.A. 1947, § 82-1949; Acts 1987, No. 531, § 5; 1993, No. 817, § 5; 1997, No. 308, § 1; 1999, No. 54, § 1; 2019, No. 315, § 2101; 2019, No. 910, § 3218.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" twice in (2) and (3); and substituted "rule" for "regulation" in (4).

The 2019 amendment by No. 910 substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (1)(A); and substituted "division" for "department" in (1)(B) and (1)(C).

### 20-27-1008. Asbestos Abatement Grant Program — Limitation on grant funds.

(a) There is created within the Division of Environmental Quality the Asbestos Abatement Grant Program, which shall be used to provide financial assistance to an eligible city or county to be used exclusively for the purpose of one (1) or more stabilization and abatement activities as provided in this subchapter.

(b) The total grant funds approved under this subchapter shall not exceed one hundred fifty thousand dollars ($150,000) per fiscal year.

**History.** Acts 2013, No. 489, § 4; 2019, No. 910, § 3219.

**Amendments.** The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (a).

### 20-27-1009. Grant eligibility — Distribution of grant funds.

(a)(1) A city or county with a population of less than fifty thousand (50,000) according to the most recent federal decennial census may apply to the Division of Environmental Quality for grant funds to be used under this subchapter.

(2) Grant funds approved for use by a county shall not be used for a stabilization and abatement activity within a city that has a population of fifty thousand (50,000) or greater according to the most recent federal decennial census.

(b) To be eligible to receive grant funds under this subchapter, a city or county shall certify the following information to the division in the form required by the division for grant applications under this subchapter:

(1) Verification from an authorized local government official that:

(A) There is an eligible structure located in the city or county;

(B) The city or county either:

(i) Owned the eligible structure at the time the eligible structure collapsed, was at imminent risk of collapse, or failed in its structural integrity; or

(ii) Has taken ownership of the eligible structure since the eligible structure collapsed, was at imminent risk of collapse, or failed in its structural integrity; and

(C) The city or county did not cause or contribute to the collapse or failure of the structural integrity of the eligible structure;

(2) Verification in the form of a report and site assessment from an asbestos abatement consultant or asbestos abatement contractor licensed under § 20-27-1006 that the friable asbestos materials in the eligible structure pose a potential threat to public health;

(3) A proposed project design and work plan that complies with the rules of the Arkansas Pollution Control and Ecology Commission; and

(4) An estimate of the anticipated costs associated with and any costs already incurred for each stabilization and abatement activity.

(c) When the division approves a grant application received under this section, the division shall distribute grant funds based on the available moneys dedicated to the Asbestos Abatement Grant Program in the Asbestos Control Fund according to procedures established by the Director of the Division of Environmental Quality.

**History.** Acts 2013, No. 489, § 4; 2017, No. 456, § 2; 2019, No. 315, § 2102; 2019, No. 910, §§ 3220-3222.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b)(3).

The 2019 amendment by No. 910 substituted "Division of Environmental Qual-

ity" for "Arkansas Department of Environmental Quality" in (a)(1) and (c); and substituted "division" for "department" twice in (b) and (c).

## 20-27-1010. Costs eligible for grant funds.

The grant funds approved under § 20-27-1009 may be used for the following:

(1) The cost of activities undertaken in an approved grant application by a city or county in the normal course and customary practice of a stabilization and abatement activity for an eligible structure owned by a city or county in the following amounts:

(A) Not more than fifty percent (50%) of the total cost of asbestos abatement activities; and

(B) Not more than two thousand dollars ($2,000) for the initial asbestos inspection; or

(2) If the Division of Environmental Quality determines that an asbestos emergency exists that constitutes an immediate threat to human health or the environment, the costs associated with the stabilization and remediation of the emergency asbestos conditions.

**History.** Acts 2013, No. 489, § 4; 2017, No. 456, § 3; 2019, No. 910, § 3223.

**Amendments.** The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (2).

## 20-27-1011. Grant requirements — Return of unused funds.

(a) Within thirty (30) days of receiving grant funds under this subchapter, a city or county shall provide a report to the Division of Environmental Quality that includes the following:

(1) The manner in which the grant funds were expended by the city or county;

(2) The results produced or the progress made using the grant funds; and

(3) A copy of each contract, invoice, purchase order, check, and other supporting documentation associated with the expenditures of the grant funds for each stabilization and abatement activity.

(b) If the stabilization and abatement activity for which grant funds are approved is not complete at the time of the report required under subsection (a) of this section, the city or county shall:

(1) Notify the division of the date the city or county expects the stabilization and abatement activity to be complete; and

(2) Continue to report its progress to the division every fourteen (14) days until the approved stabilization and abatement activity is complete and the requirements of this section are met.

(c)(1) A city or county that receives grant funds under this subchapter shall immediately return to the division any unused portion of the grant funds when the stabilization and abatement activity is complete.

(2) The division shall deposit any unused grant funds returned to the division by a city or county under subdivision (c)(1) of this section into

the Asbestos Control Fund to be used exclusively for the Asbestos Abatement Grant Program.

**History.** Acts 2013, No. 489, § 4; 2019, No. 910, §§ 3224-3226.

**Amendments.** The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in the introductory language of (a); and substituted "division" for "department" throughout (b) and (c).

## 20-27-1012. Rules.

The Arkansas Pollution Control and Ecology Commission shall promulgate rules to implement this subchapter.

**History.** Acts 2013, No. 489, § 4; 2019, No. 315, § 2103.

**Amendments.** The 2019 amendment substituted "Rules" for "Regulations" in the section heading; and substituted "rules" for "regulations" in the text.

### Subchapter 11 — Blasting



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-27-1101. Penalty.

Any person who knowingly violates any provision of this subchapter or any rule or order adopted pursuant to this subchapter shall be guilty of a Class B misdemeanor.

**History.** Acts 1991, No. 780, § 1; 2019, No. 315, § 2104.

**Amendments.** The 2019 amendment substituted "rule" for "regulation".

## 20-27-1102. Rules — Enforcement — Administration.

(a) The Director of the Division of Labor shall promulgate rules to establish minimum standards for the qualifications of those individuals performing blasting in Arkansas.

(b) The director shall implement, enforce, and administer this subchapter and the rules adopted pursuant to this subchapter.

(c) Rules under this section shall be adopted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d)(1) The director may establish by rule fees for certifying individuals as qualified to perform blasting in Arkansas.

(2) The fees shall not exceed the sum of thirty dollars ($30.00) per applicant.

**History.** Acts 1991, No. 780, § 1; 1993, No. 324, § 1; 2019, No. 315, § 2105; 2019, No. 910, § 5486.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "Rules" in the section heading; substituted "rules" for "regulations" throughout the section; substituted "Rules" for "Regulations" in (c); and substituted "rule" for "regulation" in (d)(1).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (a).

## 20-27-1103. Exemptions.

This subchapter shall not apply to the following:

(1) Blasting conducted at a surface coal mine regulated by the Division of Environmental Quality pursuant to the Arkansas Surface Coal Mining and Reclamation Act of 1979, § 15-58-101 et seq.; and

(2) Blasting conducted during seismic operations regulated by the Oil and Gas Commission pursuant to § 15-71-114.

**History.** Acts 1991, No. 780, § 1; 1999, No. 1164, § 176; 2019, No. 910, § 3227.

**Amendments.** The 2019 amendment substituted "Division of Environmental Quality" for "Arkansas Department of Environmental Quality" in (1).

### Subchapter 12 — Mobile Home and Travel Trailer Parks

SECTION.



## 20-27-1201. Sewage disposal plans — Fees — Definitions.

(a) As used in this section:

(1) [Repealed.]

(2) "Mobile home" means a transportable, single-family dwelling unit suitable for year-round occupancy and containing the same water supply, waste disposal, and electrical conveniences as immobile housing; and

(3) "Travel trailer" means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently identified "travel trailer" by the manufacturer of the trailer and, when factory-equipped for the road, it shall have a body width not exceeding eight feet (8') and a length not exceeding thirty-two feet (32').

(b) When a mobile home park or travel trailer park is hereafter constructed utilizing a noncentralized method of sewage disposal,

properly prepared plans and specifications for the construction shall be submitted to the Division of Environmental Health Protection of the Department of Health for approval before any work is begun.

(c) The plan review fee shall be as follows:

(1) Two (2) — twenty-five (25) spaces ..... $25.00
(2) Twenty-six (26) — fifty (50) spaces ..... 50.00
(3) Fifty-one (51) — seventy-five (75) spaces ..... 75.00
(4) Seventy-six (76) or more spaces ..... 100.00

(d) All fees collected under this section are special revenues and shall be deposited into the State Treasury to the credit of the Public Health Fund to be used exclusively for the operation of the department.

(e) Subject to such rules as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the department may transfer all unexpended funds received from the collection of plan review fees, as certified by the Chief Fiscal Officer of the State, which shall be carried forward and made available for expenditure for the same purpose for any following fiscal year.

**History.** Acts 1991, No. 36, §§ 1-3; 2019, No. 315, § 2106; 2019, No. 389, § 46.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (e).

The 2019 amendment by No. 389 repealed (a)(1).

## Subchapter 13 — Arkansas Quarry and Open Pit Mine Blasting Control Act



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

**20-27-1302. Definitions.**

As used in this subchapter:

(1) "Blasting" means the use of explosives or a blasting agent;

(2) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, that is intended for blasting if the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined;

(3) "Contractor" means any person conducting blasting at a quarry or open pit mine other than the owner or operator and its employees;

(4) [Repealed.]

(5) [Repealed.]

(6) "Explosives" means any substance classified as an explosive by either state or federal law;

(7) "Mine" means any quarry or open pit;

(8) "Operator" means any person conducting surface mining operations at a quarry or open pit;

(9) "Owner" means the actual owner of the mine;

(10) "Person" means any individual, partnership, corporation, business, or other entity; and

(11) "Quarry" or "open pit mine" means any open excavation, prospect opening, pit, bank, or open-cut workings for the surface extraction of minerals, stone, or other product for commercial use, excluding coal.

**History.** Acts 1995, No. 814, § 2; 2019, No. 389, § 47; 2019, No. 910, § 5487.

**Amendments.** The 2019 amendment by No. 389 repealed (4) and (5).

The 2019 amendment by No. 910 repealed (4) and (5).

**20-27-1303. Blasting standards.**

(a) Blasting shall be conducted to prevent injury to persons, damage to public or private property, adverse impact on any underground mine, and change in the course, channel, or availability of surface or ground water outside the mine's perimeter.

(b)(1) In blasting operations, airblast shall not exceed the maximum limits set forth in 30 C.F.R. § 816.67(b), at the location of any structure, residence, public building, school, church, or commercial or institutional building outside the perimeter of a mine and owned or leased by a person other than the mine owner or operator.

(2)(A) If necessary to prevent damage, the Director of the Division of Labor may require lower maximum allowable airblast levels than those specified in subdivision (b)(1) of this section for use in the vicinity of a specific blasting operation.

(B) Such an action shall only be taken following consultation with whatever expert or experts the director deems appropriate.

(3)(A) The director may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(B) The measuring system shall have an upper-end flat frequency response of at least two hundred hertz (200 Hz). The measuring system shall also have a low-end frequency response of two hertz (2 Hz) and be within minus three decibels (-3 dB) at two hertz (2 Hz).

(c)(1) Flyrock from blasting operations, traveling in the air or along the ground, should not be cast from the mine site.

(2) In the event that flyrock is cast from the mine site, the owner or operator and contractor shall be liable and responsible for any damages, including cleanup and removal of the flyrock.

(d)(1)(A) In blasting operations, ground vibration shall not exceed the maximum limits established in accordance with either the maximum peak particle velocity limits contained in 30 C.F.R. § 816.67(d)(2), or the scaled-distance equation established at 30 C.F.R. § 816.67(d)(3), at the location of any structure, residence, public building, school, church, or commercial or institutional building outside the perimeter of a mine and owned or leased by a person other than the mine owner or operator.

(B) If a seismographic record for a blast exists or is required, the maximum limit for ground vibration shall be the peak particle velocity limits contained in 30 C.F.R. § 816.67(d)(2), at any structure, residence, public building, school, church, or commercial or institutional building.

(2)(A) If necessary to prevent damage, the director may require lower maximum allowable ground vibration levels than those specified in subdivision (d)(1) of this section for use in the vicinity of a specific blasting operation.

(B) Such action shall only be taken following consultation with whatever expert or experts the director deems appropriate.

(3) The director may require an owner or operator to conduct seismic monitoring of any blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e)(1) The maximum limits for airblast and ground vibration as specified in subdivisions (b)(1) and (d)(1) of this section shall be construed as the threshold below which blasting damage is unlikely to occur. However, the director shall have the authority to promulgate rules requiring more or less restrictive limits, as appropriate.

(2) Such an action shall only be taken following consultation with whatever expert or experts the director deems appropriate.

(f)(1) If a pit or quarry is closer than three hundred feet (300') from any public highway, road, or street, no blasting shall be conducted without the prior written approval of the director.

(2) Notwithstanding subdivision (f)(1) of this section, any quarry or pit in existence on July 1, 1995, shall be allowed to continue operations without obtaining the written approval of the director.

(g)(1) All blasting operations shall be conducted between sunrise and sunset, unless extraordinary circumstances arise which would necessitate conducting a blast outside these hours.

(2) Such circumstances shall be documented in the blast records required by § 20-27-1305.

(h)(1) Before the firing of a blast, the owner or operator or contractor shall follow a definite plan of warning signals that can be clearly seen or heard by anyone in the blasting area.

(2) The owner or operator shall inform all employees at the operation as to the established procedure.

**History.** Acts 1995, No. 814, § 6; 2019, No. 315, § 2107; 2019, No. 910, § 5488.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (e)(1).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (b)(2)(A).

### 20-27-1305. Recordkeeping.

(a)(1) The owner or operator shall retain a record of all blasts for at least three (3) years.

(2) Upon request, copies of these records shall be made available to the Division of Labor for inspection.

(3) The records shall contain the following data:

(A) The name of the operator or contractor conducting the blast;

(B) The location, date, and time of the blast;

(C) The name and signature and the state certification number of the blaster conducting the blast;

(D) The identification and direction and distance, in feet, from the nearest blast hole to the nearest structure, residence, public building, school, church, or commercial or institutional building outside the perimeter of the mine which is owned or leased by a person other than the mine owner or operator;

(E) The weather conditions, including those which may cause possible adverse blasting effects;

(F) The type of material blasted;

(G) The sketches of the blast pattern, including number of holes, burden, spacing, decks, and delay pattern;

(H) The diameter and depth of the holes;

(I) The types of explosives used;

(J) The total weight of explosives used per hole;

(K) The maximum weight of explosives detonated in an eight-millisecond period;

(L) The initiation system;

(M) The type and length of stemming;

(N) The mats or other protection used;

(O) The seismographic and airblast records, if required, which shall include:

(i) The type of instrument, the sensitivity, and the calibration signal or certification of annual calibration;

(ii) The exact location of the instrument and the date, time, and distance from the blast;

(iii) The name of the person and firm who set up the instrument;

(iv) The name of the person and firm taking the reading;

(v) The name of the person and firm analyzing the seismographic record; and

(vi) The vibration level or airblast level, or both, recorded;

(P) The reasons and conditions for each unscheduled blast; and

(Q) The reasons and conditions for any blast conducted before sunrise or after sunset.

(b)(1) The records required by subsection (a) of this section shall be maintained at the mine where the blast was conducted or at the regular business location of the owner or operator.

(2) Copies of the records required by subsection (a) of this section shall be maintained by the contractor.

**History.** Acts 1995, No. 814, § 8; 2019, No. 910, § 5489.

**Amendments.** The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (a)(2).

## 20-27-1306. Insurance.

(a) All owners, operators, and contractors covered by this subchapter shall maintain a policy of insurance issued by an insurance company authorized to do business in Arkansas and insuring the owner, operator, or contractor against liability for personal injury or property damage arising out of the operation or use of the mine in the minimum amount of one million dollars ($1,000,000) for each incident or occurrence.

(b) Proof of such coverage shall be made available to the Director of the Division of Labor or his or her authorized representative upon request.

**History.** Acts 1995, No. 814, § 9; 2019, No. 910, § 5490.

**Amendments.** The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (b).

## 20-27-1307. Exemptions — Owners and operators.

(a) This subchapter shall not apply to any mine in existence or operation on July 1, 1995, unless the mine or quarry site has been the subject of a criminal or civil proceeding resulting from its blasting operations within the three-year period before January 1, 1995.

(b) Notwithstanding subsection (a) of this section, the authority of the Director of the Division of Labor shall not be restricted with respect to:

(1) Mines or quarries which were in existence and operation on July 1, 1995, but which change owners or operators after July 1, 1995; or

(2) New or existing mines or quarries which were not in operation on July 1, 1995.

**History.** Acts 1995, No. 814, § 5; 2019, No. 910, § 5491.

**Amendments.** The 2019 amendment substituted "Division of Labor" for "Department of Labor" in the introductory language of (b).

**20-27-1308. Director — Powers and duties generally.**

(a) In addition to other powers and authority provided by law, the Director of the Division of Labor or his or her authorized representative shall have the following authority:

(1) To promulgate rules for the administration and enforcement of this subchapter after public hearing and opportunity for public comment;

(2) To establish by rule standards for the performance of blasting operations at mines after public hearing and opportunity for public comment;

(3) To investigate as to any violation of this subchapter or any rule or order issued under this subchapter;

(4) To administer oaths, take or cause to be taken the depositions of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all records and other evidence relative to any matter under investigation or hearing;

(5) To enter and inspect during normal business hours any mine, any place of business of a mine owner or operator, or any place of business of any contractor engaged in blasting operations at any mine for the purpose of ascertaining compliance with this subchapter and any rule or order issued under this subchapter. This right of entry includes the right to examine, inspect, and copy any appropriate records and to question any employees;

(6) To issue cease and desist orders, as well as orders directing that affirmative measures be taken to comply with this subchapter and any rule issued under this subchapter;

(7) To require, at his or her discretion, a mine owner or operator or contractor to offer a pre-blast survey of all buildings or structures up to a radius of one-half (½) of a mile of the perimeter of the mine before the initiation of blasting or the continuation of blasting under such terms and conditions as may be established by order of the director;

(8) To require, at his or her discretion, a mine owner or operator or contractor to develop and submit a blasting plan for approval;

(9) To require, at his or her discretion, a mine owner or operator or contractor to monitor and measure air blasts or ground vibration, or both, under such terms and conditions as may be established by order of the director or to conduct such monitoring and measuring through his or her authorized representative;

(10) To issue a variance from any specific requirement of this subchapter or any rule issued under this subchapter, provided that literal compliance would constitute an undue hardship and that reasonable safety of persons and property is secured;

(11) To certify to official acts;

(12) To assess civil penalties as provided in § 20-27-1313; and

(13) To enforce generally this subchapter and the rules and orders issued under this subchapter.

(b) In determining whether to order a pre-blast survey or whether to order monitoring and measurement of air blasts and ground vibration,

the director may consider the nature of any written complaints made against that owner or operator or contractor or any written complaints about that specific mine location, as well as the number and frequency of such complaints.

(c) In case of failure of any person to comply with any subpoena lawfully issued under this section or upon the refusal of any witness to produce evidence or to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of any circuit court or judge thereof, upon application of the Division of Labor, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify therein.

**History.** Acts 1995, No. 814, § 4; 2019, No. 315, §§ 2108-2111; 2019, No. 910, §§ 5492, 5493.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a)(1); deleted "or regulation" following "rule" in (a)(2), (a)(6), and (a)(10); deleted "regulation" following "rule" in (a)(3); and deleted "regulations" following "rules" in (a)(13).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in the introductory language of (a) and in (c).

## 20-27-1309. Hearings, orders, and notices.

(a) All hearings conducted by the Director of the Division of Labor and all orders, notices, and assessments shall conform to the requirements of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Service of any notice, order, or assessment may be made by delivery to the person to be ordered or notified or by mailing it, postage prepaid, addressed to the person at his or her principal place of business as last of record with the Division of Labor.

(c)(1) Any administrative order issued by the director shall be final, unless within twenty (20) days after service of notice thereof, the person charged with the violation or any complainant entitled to such notice notifies the director in writing that the order is contested.

(2) A complainant entitled to notice is any person who has made a written complaint within the past three (3) years to the division regarding the blasting operations of the person charged with the violation.

(d) If an order is contested, a final administrative order shall be made after hearing.

(e) Any final administrative action is subject to appeal pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

**History.** Acts 1995, No. 814, § 10; 2019, No. 910, §§ 5494, 5495.

**Amendments.** The 2019 amendment substituted "Division of Labor" for "Department of Labor" in (a) and (b); and substituted "division" for "department" in (c)(2).

### 20-27-1310. Cooperation with State Fire Marshal.

(a) The Director of the Division of Labor shall consult the State Fire Marshal regarding the adoption of any rules.

(b) The Division of Labor and the State Fire Marshal shall cooperate and coordinate their activities in order to avoid duplication of services.

**History.** Acts 1995, No. 814, § 12; 2019, No. 315, § 2112; 2019, No. 910, § 5496.

**Amendments.** The 2019 amendment by No. 315 deleted "or regulations" following "rules" in (a).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (a) and (b).

### 20-27-1311. Existing rules — Orders — Remedies.

(a) All existing rules of any other state agency relating to subjects embraced within this subchapter shall remain in full force and effect unless expressly repealed, amended, or superseded by the state agency affected.

(b) All orders entered, permits granted, and pending legal proceedings instituted by any person, public or private, relating to subjects embraced within this subchapter shall remain unimpaired and in full force and effect until superseded by actions taken by the Director of the Division of Labor under this subchapter.

(c) No existing civil or criminal remedies, public or private, for any wrongful action relating to subjects embraced by this subchapter shall be excluded or impaired by this subchapter.

**History.** Acts 1995, No. 814, § 13; 2019, No. 315, § 2113; 2019, No. 910, § 5497.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (b).

### 20-27-1312. Criminal penalties.

(a) Except as provided in subsection (b) of this section, any person who violates any provision of this subchapter or who violates any rule or order issued under this subchapter shall be guilty of a Class A misdemeanor.

(b)(1) It shall be unlawful for a person to:

(A) Violate any provision of this subchapter or any rule or order issued under this subchapter and leave the state or remove his or her person from the jurisdiction of this state;

(B) Purposely, knowingly, or recklessly conduct blasting in a manner prohibited by this subchapter or any rule or order issued under this subchapter and thereby create a substantial likelihood of adversely affecting the health, safety, welfare, or property of any person, including the state or any political subdivision of the state; or

(C) Purposely or knowingly make any false statement, representation, omission, or certification in any document required to be maintained under this subchapter or to falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under this subchapter.

(2) A person who violates this subsection shall be guilty of a Class D felony.

**History.** Acts 1995, No. 814, § 3; 2019, No. 315, §§ 2114, 2115.

**Amendments.** The 2019 amendment deleted "regulation" following "rule" throughout the section.

## 20-27-1313. Civil penalties.

(a)(1) Any person who violates any provision of this subchapter or who violates any rule or order issued under this subchapter may be assessed an administrative civil penalty by the Director of the Division of Labor in an amount not to exceed ten thousand dollars ($10,000) per violation.

(2) Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.

(b)(1) Assessment of a civil penalty by the director shall be made no later than three (3) years from the date of the occurrence of the violation.

(2)(A) In his or her discretion, the director may accept payment of assessed civil penalties in installments.

(B) The assessment by the director shall be final, unless, within twenty (20) days after service of notice thereof by certified mail, the person charged with the violation or any complainant entitled to such notice notifies the director in writing that the proposed assessment is contested.

(C) If an assessment is contested, a final administrative determination shall be made pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) When finally determined, the amount of any assessment may be recovered in a civil action brought by the director in a court of competent jurisdiction without paying costs or giving bond for costs.

(d)(1) Sums collected as reimbursement for expenses, costs, and damages to the Division of Labor shall be deposited into the operating fund of the division.

(2) Sums collected as civil penalties shall be deposited into the General Revenue Fund Account of the State Apportionment Fund.

(e) Notice of any assessment by the director shall be served on any person who has made a written complaint within the past three (3) years to the division regarding the blasting operations of the person charged with the violation.

**History.** Acts 1995, No. 814, § 3; 2019, No. 315, § 2116; 2019, No. 910, §§ 5498-5500.

**Amendments.** The 2019 amendment by No. 315 deleted "regulation" following "rule" in (a)(1).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (a)(1) and (d)(1); and substituted "division" for "department" in (d)(1) and (e).

### 20-27-1314. Restraint.

In addition to the civil penalty provided in § 20-27-1313, the Director of the Division of Labor may petition any court of competent jurisdiction without paying costs or giving bond for costs to:

(1)(A) Enjoin or restrain any violation of or compel compliance with this subchapter and any rules or orders issued under this subchapter.

(B) In situations in which there is an imminent threat to public or worker safety or to property, the director may seek a temporary restraining order for the cessation of any blasting;

(2) Affirmatively order that such remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter; and

(3) Recover all costs, expenses, and damages to the Division of Labor and any other agency or subdivision of the state in enforcing or effectuating this subchapter.

**History.** Acts 1995, No. 814, § 3; 2019, No. 315, § 2117; 2019, No. 910, § 5501.

**Amendments.** The 2019 amendment by No. 315 deleted "regulations" following "rules" in (1)(A).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in the introductory language and in (3).

### 20-27-1315. Private right of action.

Any person adversely affected by a violation of this subchapter or any rules or orders issued pursuant to this subchapter shall have a private right of action for relief against the violator.

**History.** Acts 1995, No. 814, § 3; 2019, No. 315, § 2118.

**Amendments.** The 2019 amendment deleted "regulations" following "rules".

### 20-27-1316. Joint and several liability.

The owner or operator of any quarry or open pit mine where a blast is conducted and any contractor conducting the blast shall be jointly and severally liable for violations of this subchapter and any rules issued under this subchapter.

**History.** Acts 1995, No. 814, § 11; 2019, No. 315, § 2119.

**Amendments.** The 2019 amendment deleted "or regulations" following "rules".

### 20-27-1317. Injunctive relief.

In addition to all other remedies provided by this subchapter, the Attorney General and the prosecuting attorney of a county may apply to the circuit court or the judge in vacation of the county where the quarry or open pit mine is located for an injunction to restrain, prevent, or

abate a public nuisance related to the subjects embraced by this subchapter or any violation of this subchapter or the rules or orders issued under this subchapter.

**History.** Acts 1995, No. 814, § 14; 2019, No. 315, § 2120.

**Amendments.** The 2019 amendment deleted "regulations" following "rules".

## Subchapter 15 — Body Piercing, Branding, and Tattooing

## [Repealed.]

SECTION.
20-27-1501 — 20-27-1513. [Repealed.]

### 20-27-1501 — 20-27-1513. [Repealed.]

**Publisher's Notes.** This subchapter, concerning body piercing, branding, and tattooing, was repealed by Acts 2021, No. 900, § 4, effective July 28, 2021. The subchapter was derived from the following sources:

20-27-1501. Acts 2001, No. 414, § 1; 2005, No. 897, § 1; 2007, No. 230, § 1; 2013, No. 596, § 1; 2013, No. 597, § 1; 2017, No. 565, § 26; 2019, No. 910, §§ 2288, 5033.

20-27-1502. Acts 2001, No. 414, § 1; 2007, No. 230, § 2; 2009, No. 1212, § 1; 2013, No. 596, § 1; 2015, No. 1157, § 2.

20-27-1503. Acts 2001, No. 414, § 1; 2003, No. 266, § 1; 2007, No. 230, § 3; 2013, No. 596, § 1; 2017, No. 565, § 27; 2019, No. 910, §§ 2289, 5034.

20-27-1504. Acts 2001, No. 414, § 1; 2007, No. 230, § 4.

20-27-1505. Acts 2001, No. 414, § 1; 2007, No. 230, § 5.

20-27-1506. Acts 2005, No. 897, § 2; 2007, No. 230, § 6; 2013, No. 596, § 2.

20-27-1507. Acts 2005, No. 897, § 2; 2007, No. 230, § 7; 2013, No. 596, § 2; 2017, No. 565, § 28; 2019, No. 910, §§ 2290-2292, 5035-5038.

20-27-1508. Acts 2005, No. 897, § 2; 2007, No. 230, § 8; 2013, No. 596, § 2.

20-27-1509. Acts 2005, No. 897, § 2; 2007, No. 230, § 9; 2013, No. 596, § 2.

20-27-1510. Acts 2013, No. 596, § 3.

20-27-1511. Acts 2013, No. 596, § 3.

20-27-1512. Acts 2013, No. 596, § 3.

20-27-1513. Acts 2013, No. 597, § 2.

For current law, see § 17-26-601 et seq.

## Subchapter 18 — Arkansas Clean Indoor Air Act of 2006

SECTION.


### 20-27-1805. Exemptions.

An owner or operator of any of the following areas may exempt itself from this subchapter:

(1) Private residences except when used as a licensed childcare, adult daycare, or healthcare facility;

(2)(A) Hotel and motel rooms that are rented to guests and are designated as smoking rooms.

(B) However, if a hotel or motel has more than twenty-five (25) guest rooms, not more than twenty percent (20%) of rooms rented to

guests in the hotel or motel may be designated as exempt from this subchapter;

(3)(A) All workplaces of any employer with fewer than three (3) employees.

(B) This exemption does not apply to any public place;

(4) A retail tobacco store, if secondhand smoke from the store does not infiltrate into areas in which smoking is prohibited under this subchapter;

(5)(A) An area within a long-term care facility that is designated by the long-term care facility as a smoking area for supervised patient and supervisory staff smoking; or

(B) An area outside of the long-term care facility that is designated for visitors and staff that is beyond twenty-five feet (25') of any primary entryway or opening of a long-term care facility;

(6) Outdoor areas of places of employment;

(7) All workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities;

(8)(A) All restaurants and bars licensed by the State of Arkansas that prohibit at all times all persons less than twenty-one (21) years of age from entering the premises if secondhand smoke does not infiltrate into areas in which smoking is prohibited under this subchapter.

(B) All restaurants and bars that are exempt under this subdivision (8) shall prominently display a health warning sign as defined by the State Board of Health; and

(9) Designated smoking areas on the gaming floor of any casino licensee of the Arkansas Racing Commission.

**History.** Acts 2006 (1st Ex. Sess.), No. 8, § 1; 2015, No. 708, § 2; 2019, No. 947, § 1.

**Amendments.** The 2019 amendment substituted "casino licensee" for "franchisee" in (9).

## 20-27-1807. Rules — Promulgation and enforcement authority.

(a) The State Board of Health may adopt reasonable rules that it determines are necessary or useful to carry out the purposes or facilitate enforcement of this subchapter.

(b)(1) The Department of Health and its authorized agents may enforce compliance with this subchapter and any rules adopted and promulgated under this subchapter by the board.

(2) Under rules of the board, the department and its authorized agents may enter upon and inspect the premises of any public place or enclosed area within a place of employment at any reasonable time and in a reasonable manner.

**History.** Acts 2006 (1st Ex. Sess.), No. 8, § 1; 2019, No. 315, §§ 2121, 2122.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (a) and (b)(1).

## Subchapter 19 — Arkansas Protection from Secondhand Smoke for Children Act of 2006

SECTION.
20-27-1902. Definition.

### 20-27-1902. Definition.

As used in this subchapter, "motor vehicle" means any motor vehicle, except a school bus, a church bus, or other public conveyance, that is required by federal or state law, rule, or regulation to be equipped with a passenger restraint system.

**History.** Acts 2006 (1st Ex. Sess.), No. 13, § 2; 2019, No. 315, § 2123.

**Amendments.** The 2019 amendment inserted "rule".

## Subchapter 21 — Arkansas Cigarette Fire Safety Standard Act

SECTION.
20-27-2104. Test method and performance standard — Definition.
20-27-2105. Certification and product change.
20-27-2107. Penalties.
20-27-2108. Implementation.
20-27-2109. Inspection.

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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-27-2104. Test method and performance standard — Definition.

(a) Except as provided in subsection (h) of this section, cigarettes shall not be offered for sale in this state or offered for sale or sold to persons located in this state unless:

(1) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section;

(2) A written certification has been filed by the manufacturer with the Director of Arkansas Tobacco Control under § 20-27-2105; and

(3) The cigarettes have been marked in accordance with § 20-27-2106.

(b)(1) Testing of cigarettes shall be conducted in accordance with the ASTM International standard E2187-04: Standard Test Method for Measuring the Ignition Strength of Cigarettes.

(2) Testing shall be conducted on ten (10) layers of filter paper.

(3)(A) No more than twenty-five percent (25%) of the cigarettes tested in a test trial under this section shall exhibit full-length burns.

(B) Forty (40) replicate tests shall compose a complete test trial for each cigarette tested.

(4) The performance standard required by this section shall be applied only to a complete test trial.

(5) Written certifications shall be based on testing conducted by a laboratory that has been accredited under standard ISO/IEC 17025 of the International Organization for Standardization or other comparable accreditation standard required by the director.

(6)(A) Laboratories conducting testing under this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results.

(B) The repeatability value shall be no greater than nineteen hundredths (0.19).

(7) This section does not require additional testing if cigarettes are tested consistent with this subchapter for any other purposes.

(8) Testing performed or sponsored by the director to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this section.

(c)(1) Each cigarette listed in a certification submitted under § 20-27-2105 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard under this section shall have at least two (2) nominally identical bands on the paper surrounding the tobacco column.

(2) At least one (1) complete band shall be located at least fifteen millimeters (15 mm) from the lighting end of the cigarette.

(3) For cigarettes on which the bands are positioned by design there shall be at least two (2) bands fully located at least fifteen millimeters (15 mm) from the lighting end and ten millimeters (10 mm) from the filter end of the tobacco column or ten millimeters (10 mm) from the labeled end of the tobacco column for nonfiltered cigarettes.

(d)(1) A manufacturer of a cigarette that the director determines cannot be tested by the test method under subdivision (b)(1) of this section shall propose a test method and performance standard for the cigarette to the director.

(2) Upon approval of the proposed test method and determination by the director that the performance standard proposed by the manufacturer is equivalent to the performance standard under subdivision (b)(3) of this section, the manufacturer may employ the test method and performance standard to certify the cigarette under § 20-27-2105.

(3) Unless the director demonstrates a reasonable basis why a proposed alternative test should not be accepted under this subchapter,

the director shall authorize a manufacturer to employ an alternative test method and performance standard to certify a cigarette for sale in this state if the director:

(A) Determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this subchapter; and

(B) Finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or rules under a legal provision comparable to this section.

(4) All other applicable requirements of this section shall apply to the manufacturer.

(e)(1) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three (3) years and shall make copies of these reports available to the director and the Attorney General upon written request.

(2) A manufacturer who fails to make copies of these reports available within sixty (60) days of receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each day after the sixtieth day that the manufacturer does not make the copies available.

(f) The director may adopt a subsequent ASTM International Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by a tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM International standard E2187-04 and the performance standard in subdivision (b)(3) of this section.

(g)(1) The director shall review the effectiveness of this section and report every three (3) years his or her findings and recommendations to the Speaker of the House of Representatives and the President Pro Tempore of the Senate for legislation to improve the effectiveness of this subchapter.

(2) The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

(h) The requirement of subsections (a) and (b) of this section shall not prohibit:

(1) A wholesaler or retailer from selling their existing inventory of cigarettes on or after January 1, 2010, if the wholesaler or retailer can establish that the inventory was in its possession before January 1, 2010, and the wholesaler or retailer can establish that the inventory was purchased before January 1, 2010, in comparable quantity to the inventory purchased during the same period of the prior year; or

(2)(A) The sale of cigarettes solely for the purpose of consumer testing.

(B) For purposes of this subsection, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer or under the control and direction of a manufacturer for the purpose of evaluating consumer acceptance of the cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for assessment.

**History.** Acts 2009, No. 697, § 2; 2011, No. 1121, § 9; 2019, No. 315, § 2124.
**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (d)(3)(B).

## 20-27-2105. Certification and product change.

(a) A manufacturer shall submit to the Director of Arkansas Tobacco Control a written certification attesting that each cigarette listed in the certification:

(1) Has been tested within the last thirty-six (36) months in accordance with § 20-27-2104; and

(2) Meets the performance standard under § 20-27-2104.

(b) A cigarette listed in the certification shall be described with the following information:

(1) Brand or trade name on the package;

(2) Style, such as light or ultra light;

(3) Length in millimeters;

(4) Circumference in millimeters;

(5) Flavor, such as menthol or chocolate, if applicable;

(6) Filter or nonfilter;

(7) Package description, such as soft pack or box;

(8) Marking under § 20-27-2106;

(9) The name, address, and telephone number of the laboratory if different than the manufacturer that conducted the test; and

(10) The date that the testing occurred.

(c) The director shall make the certifications available to the Attorney General and the Secretary of the Department of Finance and Administration for purposes consistent with this subchapter.

(d) A cigarette certified under this section shall be recertified every three (3) years.

(e)(1)(A) For each brand family of cigarettes listed for certification, a manufacturer shall pay a fee of one thousand dollars ($1,000) to the director.

(B) The fee shall be applied to all cigarettes within the certified brand family and shall include any new cigarette certified within the brand family during the three-year certification period.

(2) The director may adjust annually this fee to ensure it defrays the actual costs of processing, enforcement, and oversight activities required by this subchapter.

(f)(1) If a manufacturer has certified a cigarette under this section and subsequently makes a change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards

required by this subchapter, the cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards under § 20-27-2104.

(2) An altered cigarette that does not meet the performance standard in § 20-27-2104 shall not be sold in this state.

**History.** Acts 2009, No. 697, § 2; 2013, No. 1273, § 2; 2019, No. 910, § 3484.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (c).

## 20-27-2107. Penalties.

(a)(1) A manufacturer, wholesaler, or any other person or entity that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of § 20-27-2104 is subject to a civil penalty in an amount not to exceed one hundred dollars ($100) for each pack of such cigarettes sold or offered for sale.

(2) The penalty against a person or entity shall not exceed one hundred thousand dollars ($100,000) during any thirty-day period.

(b)(1) A retailer that knowingly sells or offers to sell cigarettes in violation of § 20-27-2104 is subject to a civil penalty in an amount not to exceed one hundred dollars ($100) for each pack of such cigarettes sold or offered for sale.

(2) The penalty against a retailer shall not exceed twenty-five thousand dollars ($25,000) for sales or offers to sell during any thirty-day period.

(c) In addition to any penalty prescribed by law, a corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification under § 20-27-2105 is subject to a civil penalty of at least seventy-five thousand dollars ($75,000) and not to exceed two hundred fifty thousand dollars ($250,000) for each false certification.

(d) A person who violates any other provision of this subchapter is subject to a civil penalty for a first offense in an amount not to exceed one thousand dollars ($1,000) and for a subsequent offense in an amount not to exceed five thousand dollars ($5,000) for each violation.

(e) It is a defense in an action for civil penalties that a wholesaler, retailer, or a person in the stream of commerce relied in good faith on a manufacturer's certificate or marking that the cigarettes complied with this subchapter.

(f)(1) An authorized representative of the Secretary of the Department of Finance and Administration or the Director of Arkansas Tobacco Control may seize and take possession of cigarettes:

(A) For which no certification has been filed as required by § 20-27-2105; or

(B) That have not been marked as required by § 20-27-2106.

(2)(A) Cigarettes seized under this section shall be destroyed.

(B) Before the destruction of cigarettes seized under this section, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

(g)(1) In addition to any other remedy provided by law, the Attorney General may file an action in circuit court for a violation of this subchapter, including petitioning:

(A) For preliminary or permanent injunctive relief against a manufacturer, importer, wholesaler, retailer, or any other person or entity to enjoin the person or entity from selling, offering to sell, or affixing tax stamps to cigarettes that do not comply with the requirements of this subchapter; or

(B) To recover costs or damages suffered by the state because of a violation of this subchapter, including enforcement costs relating to the specific violation and attorney's fees.

(2) Each violation of this subchapter or of the rules adopted under this subchapter constitutes a separate civil violation for which the director or the Attorney General may obtain relief.

(3) Upon obtaining judgment for injunctive relief under this section, the director or the Attorney General shall provide a copy of the judgment to all wholesalers to which the cigarettes have been sold.

**History.** Acts 2009, No. 697, § 2; 2019, No. 910, § 3485.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in the introductory language of (f)(1).

## 20-27-2108. Implementation.

(a) The Director of Arkansas Tobacco Control may promulgate rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to effectuate the purposes of this subchapter.

(b)(1) The Secretary of the Department of Finance and Administration, the director, and their employees, in the regular course of conducting inspections of wholesalers and retailers, as authorized under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., may inspect cigarettes to determine if the cigarettes are marked as required by § 20-27-2106.

(2) If the secretary discovers cigarettes that are not marked as required, the secretary shall notify the director.

**History.** Acts 2009, No. 697, § 2; 2019, No. 910, § 3486.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" throughout (b).

## 20-27-2109. Inspection.

(a) To enforce the provisions of this subchapter, the Attorney General, the Secretary of the Department of Finance and Administration, the Director of Arkansas Tobacco Control, and their authorized representatives may examine the books, papers, invoices, and other records

of a person in possession, control, or occupancy of premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises.

(b) Every person in possession, control, or occupancy of premises where cigarettes are placed, stored, sold, or offered for sale shall give the Attorney General, the secretary, the director, and their authorized representatives the means, facilities, and opportunity for the examinations authorized by this section.

**History.** Acts 2009, No. 697, § 2; 2019, No. 910, § 3487.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (a) and (b).

## Subchapter 27 — Unlawful Sale of Bedding

SECTION.
20-27-2701. Definitions.
20-27-2702. Bedding labels.

### 20-27-2701. Definitions.

As used in this subchapter:

(1) "Bedding" means a mattress, upholstered spring, comforter, pad, cushion, pillow, box springs, foundation, or studio couch made, in whole or in part, from new or secondhand fabric, filling materials, or other materials, which can be used for sleeping or reclining purposes;

(2) [Repealed.]

(3) [Repealed.]

(4) "Manufacture" means the making of bedding out of new material;

(5) "New material" means any fabric, filling material, other material, or article of bedding that has not been previously used in the manufacturing, distributing, or retailing process or for which the legal title has not been transferred by a manufacturer, distributor, or retailer to a final purchaser, including by-products of any textile or manufacturing process that are free from dirt, insects, and other contamination;

(6) "Person" means an individual, sole proprietorship, partnership, limited liability company, corporation, joint venture, association, trust, and any other entity and the agents, servants, and employees of the entity;

(7) "Renovator" means a person that repairs, makes over, recovers, restores, sanitizes, germicidally treats, cleans, or renews bedding;

(8) "Sanitizer" means a person that sanitizes, germicidally treats, or cleans but does not otherwise alter any fabric, filling material, other materials, or article of bedding for use in manufacturing or renovating bedding;

(9) "Secondhand material" means any fabric, filling material, other material, or article of bedding that has been previously used for any purpose, including without limitation floor samples from any source other than a seller's own business and factory-returned materials or

bedding, or is derived from a postconsumer or industrial waste and that may be used in place of new material in manufacturing or renovating bedding; and

(10) "Seller" means a person that offers or exposes for sale, barters, trades, delivers, consigns, leases, possesses with intent to sell, or disposes of bedding in any commercial manner at the wholesale, retail, or other level of trade.

**History.** Acts 2013, No. 1420, § 1; 2019, No. 389, § 48; 2019, No. 910, § 5039.

**Amendments.** The 2019 amendment by No. 389 repealed (2) and (3).

The 2019 amendment by No. 910 repealed (3).

## 20-27-2702. Bedding labels.

(a)(1) All bedding manufactured, renovated, sanitized, or sold by a seller within the state shall bear a clear and conspicuous label that explicitly states whether the bedding is made from all new materials or is made in whole or in part from secondhand materials.

(2) The label on bedding made from all new materials shall be white in color and shall state, "ALL NEW MATERIAL".

(3) The label on bedding made in whole or in part from secondhand materials shall be yellow in color and shall state, "SECONDHAND MATERIAL".

(4) The labels shall also comply with rules adopted by the Department of Health regarding label dimension, format, informational content, wording, letter size, material, means of placement and affixing to the bedding, and other relevant factors.

(5) Labels required by this section shall be permanently affixed.

(b) A person shall not remove, deface, or alter in whole or in part a label or any statement on a label with the intent to defeat the provisions of this section.

(c) A person shall not make a false or misleading statement on any label required under this section.

(d) The Secretary of the Department of Health shall approve the form and size of labels, the fabric of which the labels are made, and the wording and statements on labels provided for under this section.

(e) Labels required under this section shall be securely attached to the article of bedding or filling material at the site of the manufacturer in a conspicuous place where the label can be easily examined.

(f) Labels required by this section shall have printing only on one (1) side.

(g) Advertising matter shall not be placed on any label or any other printed matter not required by the provisions of this section.

(h) The following statements and headings shall be shown on labels:

(1) "UNDER PENALTY OF LAW THIS TAG SHALL NOT BE REMOVED EXCEPT BY THE CONSUMER" shall appear at the top of the label;

(2) Headings shall read "All New Material" when the bedding material is wholly new material;

(3) "Secondhand Material" when the bedding material in whole or in part is composed of secondhand material;

(4) Description of filling material as provided in the applicable rules shall be included on the label;

(5) The registry number assigned or approved by the department shall be included on the label;

(6) Certification by the manufacturer that the materials in this article are described in accordance with law shall be included on the label; and

(7) For renovated articles, the name and address of the owner.

**History.** Acts 2013, No. 1420, § 1; 2019, No. 315, § 2125; 2019, No. 910, § 5040.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (h)(4).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (d).

# CHAPTER 28

# PUBLIC WATER SYSTEM SERVICE ACT

SECTION.



## 20-28-104. Fees — Exceptions.

(a) The Department of Health may collect the following fees from each public water system for service, other than plan reviews, provided by the public water system supervision program:

(1)(A) For a community public water system and a nontransient noncommunity water system, not more than forty cents (40¢) per service connection per month.

(B)(i) The number of service connections for a community public water system not serving discrete service connections shall be calculated by dividing the population served by two and one-half (2½).

(ii) The number of service connections for a nontransient noncommunity water system shall be calculated by dividing the population served by two and one-half (2½).

(C) The minimum fee charged to a community public water system or a nontransient noncommunity water system is two hundred fifty dollars ($250) per year; and

(2) For a noncommunity public water system, one hundred twenty-five dollars ($125) per year.

(b) The number of service connections or population served shall be taken from the department's public water system inventory at the time of billing.

(c)(1) A new water system shall not be assessed a fee for services until water is supplied to the first connection.

(2) Each state-owned noncommunity public water system is exempt from the fee provisions of this chapter.

(d) The fees shall be established by the State Board of Health to assure implementation of this chapter.

**History.** Acts 1987, No. 95, § 3; 1991, No. 1053, § 1; 1993, No. 903, § 1; 2007, No. 292, § 1; 2009, No. 952, § 7; 2019, No. 788, § 1.

**Amendments.** The 2019 amendment substituted "forty cents (40¢)" for "thirty cents (30¢)" in (a)(1)(A).

## 20-28-105. Payment of fees.

(a) All fees payable under this chapter shall be due according to the following schedule and shall be payable to the Department of Health:

(1) Annual fees of one thousand dollars ($1,000) and less shall be payable in a single payment due on January 1 of each year;

(2) Annual fees greater than one thousand dollars ($1,000) and less than five thousand dollars ($5,000) shall be payable in quarterly payments, with the payments due on October 1, January 1, April 1, and July 1 of each year; and

(3) Annual fees of five thousand dollars ($5,000) and greater shall be payable in monthly payments, with the first payment due on August 1 of each year. Successive payments shall be due on the first day of each month.

(b) All water systems issuing regular water bills for water service may recover the cost of the fees stated in § 20-28-104 by one (1) of the following methods:

(1) Assessing a direct charge on each bill of not more than forty cents (40¢) per month per service connection; or

(2)(A) Apportioning the total amount of the annual fee charged to the water system among its customers in any manner that the water system determines to be more equitable.

(B) However, a charge in excess of forty cents (40¢) per month per service shall not be charged for any service through which water is provided to another community public water system.

(c) The charge shall be labeled, "FEE FOR FEDERAL SAFE DRINKING WATER ACT COMPLIANCE", and shall not be considered as a part of the water rates of the respective water systems. The fee shall be established by the State Board of Health to assure implementation of this chapter.

**History.** Acts 1987, No. 95, § 4; 1991, No. 1053, § 1; 1993, No. 903, § 1; 2007, No. 292, § 2; 2019, No. 788, § 2.

**Amendments.** The 2019 amendment substituted "forty cents (40¢)" for "thirty cents (30¢)" in (b)(1) and (b)(2)(B); and, in (b)(2)(B), substituted "a charge" for "no charge", and inserted "not".

# CHAPTER 29

# ARKANSAS MANUFACTURED HOME RECOVERY ACT



## 20-29-105. Complaints — Amount of damages.

(a) All consumer, licensee, installer, retailer, or manufacturer complaints shall be filed with the Arkansas Manufactured Home Commission. The commission shall determine, by hearing or whatever procedure it establishes, whether any standard adopted by the commission has been violated and, if so, the actual cost of repairs to the manufactured home, if any, suffered by the aggrieved party or parties.

(b) The amount of damages awarded by the commission shall be limited to the actual cost of repairs to the manufactured home and shall not include attorney's fees. On appeal to the circuit court from an award of the commission, the jurisdiction of the circuit court shall be limited to the actual cost of repairs to the manufactured home. The circuit court shall not have jurisdiction to award attorney's fees, court costs, or punitive or exemplary damages for claims covered by this chapter.

(c) The question of what constitutes a continuing series of violations shall be a matter solely within the discretion and judgment of the commission.

(d)(1) The commission shall by rule establish procedures for the investigation and timely resolution of claims against the Manufactured Housing Recovery Fund involving participating manufacturers, retailers, and installers of manufactured homes regarding responsibility for the correction or repair of construction or installation defects in manufactured homes that are reported during the one-year period beginning on the date of installation of the home.

(2) The investigations, required corrections, and remedial actions shall be handled in accordance with the code and rules promulgated pursuant to the code.

(3) The commission shall by rule establish requirements for eligibility of claims against the fund.

**History.** Acts 1987, No. 346, § 3; 1991, No. 373, § 2; 2001, No. 1263, § 2; 2019, No. 315, § 2126.

**Amendments.** The 2019 amendment substituted "rule" for "regulation" in (d)(1) and (d)(3); and substituted "rules" for "regulations" in (d)(2).

## 20-29-112. Rules.

The Arkansas Manufactured Home Commission may establish rules for implementation of this chapter.

**History.** Acts 1991, No. 373, § 3; 2019, No. 315, § 2127.

**Amendments.** The 2019 amendment substituted "Rules" for "Regulations" in

the section heading and substituted "rules" for "regulations" in the text.

# CHAPTER 30

# SWIMMING POOLS



## 20-30-101. Definitions.

As used in this chapter:

(1) "Critical items" means those aspects of operation or conditions of facilities or equipment which, if in violation, constitute the greatest hazards to health and safety, including imminent health hazards. These include:

(A) Restriction of employees with infection;

(B) Approved water supply of hot and cold running water under pressure;

(C) Sewage and liquid waste disposal;

(D) No cross-connection or back-siphonage;

(E) Safety;

(F) Excessive turbidity;

(G) Failure to maintain proper chemical levels;

(H) Failure or lack of filtration, sanitizing, and cleaning equipment and chemicals; and

(I) Absence or lack of required supervisory personnel;

(2) [Repealed.]

(3) "Imminent health hazard" means any condition, deficiency, or practice which, if not corrected, is very likely to result in illness, injury, or loss of life to any person;

(4) "Person" means any individual, partnership, firm, corporation, agency, municipality, state or political subdivision, or the United States Government and its agencies and departments; and

(5)(A) "Public swimming pool" means a structure of man-made materials, located either indoors or outdoors, used for bathing or swimming, together with buildings, appurtenances, and equipment used in connection therewith. Included are spa-type, wading, or special purpose pools or water recreation attractions, including, but not limited to, those operated at camps, childcare facilities, cities, clubs, subdivisions, apartment buildings, counties, institutions, schools, motels, hotels, and mobile home parks, to which admission may be gained with or without payment of a fee.

(B) "Public swimming pool" shall not apply to private pools at single-family residences.

**History.** Acts 1987, No. 623, § 1; 1997, No. 285, § 1; 2019, No. 389, § 49.

**Amendments.** The 2019 amendment repealed (2).

## 20-30-102. Penalty.

(a) Any person operating a public swimming pool in violation of this chapter or rules adopted pursuant to this chapter shall be guilty of a violation.

(b)(1) Upon conviction, that person shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500) for each offense.

(2) Each day of operation after sufficient notice has been given shall constitute a separate offense.

**History.** Acts 1987, No. 623, § 7; 2005, No. 1994, § 128; 2019, No. 315, § 2128.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (a).

## 20-30-103. Authority of Department of Health.

The Department of Health is authorized:

(1) To carry out or cause to be carried out all provisions of this chapter;

(2) To collect all fees provided for in this chapter;

(3) To prescribe such rules governing the alteration, construction, sanitation, safety, and operation of public swimming pools as may be necessary to protect the health and safety of the public and to require every public swimming pool to comply with these rules;

(4) To inspect every public swimming pool in operation in the state to determine compliance with this chapter and rules;

(5) To issue or cause to be issued, suspend, and revoke permits to operate public swimming pools as provided in this chapter;

(6) To notify the owner, proprietor, or agent in charge of any public swimming pool of such changes or alterations as may be necessary to effect complete compliance with this chapter and rules governing the construction, alteration, and operation of the facilities and to close the facilities for failure to comply within specified times as provided in this chapter and rules; and

(7) To train, test, and certify qualified operators of public swimming pools.

**History.** Acts 1987, No. 623, § 2; 1997, No. 285, § 2; 2019, No. 315, §§ 2129, 2130.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" throughout (3), (4), and (6).

## 20-30-104. Permits — Application, renewal, posting, etc.

(a) No person shall operate a public swimming pool who does not hold a valid permit issued to him or her by the Department of Health.

(b) Every person who shall engage in the business of operating a public swimming pool shall procure a permit from the department for each public swimming pool operated.

(c)(1) Any person planning to operate a public swimming pool shall make written application for a permit on forms provided by the department. The applications shall be completed and returned to the department with the proper permit fee.

(2) Before approval of the application for a permit, the department shall inspect the proposed facility to determine compliance with requirements of this chapter and rules. The department shall issue a permit to the applicant if the inspection reveals that the facility is in compliance with the requirements of this chapter and rules.

(d) Each permit for public swimming pools shall expire on the December 31 next following its issuance.

(e) Applications for renewal of permits for existing public swimming pools shall be mailed to the operator before January 1 of each year. When completed applications and the proper permit fees are returned, the department shall issue new permits to applicants.

(f) No permit shall be transferred from one location or individual to another.

(g) Permits shall be posted in a conspicuous manner.

**History.** Acts 1987, No. 623, §§ 3, 4; 2019, No. 315, § 2131.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" twice in (c)(2).

### 20-30-107. Disposition of funds.

(a) All fees and fines levied and collected under this chapter are declared to be special revenues and shall be deposited into the State Treasury to be credited to the Public Health Fund.

(b) Subject to such rules as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health may transfer all unexpended funds relative to swimming pools that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

**History.** Acts 1987, No. 623, § 8; 2019, No. 315, § 2132.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (b).

## CHAPTER 31

## ARKANSAS ELECTRICAL CODE AUTHORITY ACT

SECTION.

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-31-102. Definitions.

As used in this chapter:

(1) [Repealed.]

(2) [Repealed.]

(3) [Repealed.]

(4) "Electrical facilities" means all wiring fixtures, appurtenances, and appliances for and in connection with a supply of electricity within or adjacent to any building, structure, or conveyance but not including the connection with a power supply meter or other power supply source;

(5) "Electrical work" means:

(A) Installations of electric conductors and equipment within or on public and private buildings or other structures, including recreational vehicles and floating buildings, and other premises such as yards, carnivals, parking and other lots, and industrial substations;

(B) Installations of conductors that connect to the supply of electricity; and

(C) Installations of other outside conductors on the premises;

(6)(A) "Electrician" means any person, individual, member, or employee of a firm, partnership, or corporation which is engaged in the business of or who for hire:

(i) Plans, lays out, and supervises the installation, maintenance, and extension of electrical conductors and equipment; or

(ii) Installs, erects, repairs or contracts to install, erect, or repair:

*(a)* Electrical wires or conductors to be used for the transmission of electric light, heat, power, or signaling purposes;

*(b)* Moulding, ducts, raceways, or conduits for the reception or protection of wires or conduits; or

*(c)* Any electrical machinery, apparatus, or systems to be used for electrical light, heat, power, or signaling purposes.

(B) "Electrician" also means an electrical contractor, a master electrician, a journeyman electrician, or an industrial maintenance electrician licensed under § 17-28-101 et seq.; and

(7) "Primary residence" means an unattached single-family dwelling used as the person's primary place of residence.

**History.** Acts 1991, No. 653, § 2; 2019, No. 389, § 50; 2019, No. 910, § 5502.

**Amendments.** The 2019 amendment by No. 389 repealed (1) through (3).

The 2019 amendment by No. 910 repealed (2).

### 20-31-104. Statewide standards — Enforcement of chapter.

(a) Beginning January 1, 1992, the Board of Electrical Examiners of the State of Arkansas is empowered to adopt rules to establish statewide standards for the construction, installation, and maintenance of electrical facilities and the performance of electrical work.

(b) The board shall adopt the National Electrical Code, 1990 edition, of the National Fire Protection Association.

(c) If there are updates and new editions to the National Electrical Code, the board, after notice and public hearing, shall adopt such changes and editions which it determines are necessary to ensure the public health and safety.

(d) The statewide standards shall guarantee a uniform minimum standard for the construction, installation, and maintenance of electrical facilities and for the performance of electrical work in:

(1) Any new public, business, or commercial buildings or structures constructed after July 15, 1991;

(2) Any new educational institutions or buildings constructed after July 15, 1991;

(3) Any new single-family or multifamily residence constructed after July 15, 1991; and

(4) Any other type of new construction undertaken in the State of Arkansas not specifically exempted under this chapter.

(e) The term "new" or "new construction" as used in this section shall apply to any new building or structure or any complete addition to or renovation of a building or structure where electrical conductors within are placed, added, or replaced in whole or part. It shall not apply to the repair or replacement of existing electrical conductors in existing buildings or structures or to minor repairs consisting of repairing or replacing outlets or minor working parts of electrical fixtures.

(f) It shall be the duty of the Division of Labor to administer and enforce this chapter.

**History.** Acts 1991, No. 653, § 3; 2019, No. 315, § 2133; 2019, No. 910, § 5503.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a).

The 2019 amendment by No. 910 substituted "Division of Labor" for "Department of Labor" in (f).

## CHAPTER 32

## DISPOSAL OF COMMERCIAL MEDICAL WASTE

## 20-32-101. Definitions.

As used in this chapter:

(1) "Commercial medical waste" means any medical waste transported from a generator to an off-site disposal facility when the off-site disposal facility is engaged in medical waste disposal for profit;

(2) [Repealed.]

(3) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, destroying, storing, or disposing of infectious waste. A facility may consist of several treatment, destruction, storage, or disposal operational units;

(4) "Generator" means any person producing medical waste;

(5) "Medical waste" means a waste from healthcare-related facilities, which, if improperly treated, handled, or disposed of may serve to transmit an infectious disease and which includes the following:

(A) Pathological wastes — all human unfixed tissues, organs, and anatomical parts, other than intact skin, which emanate from surgeries, obstetrical procedures, dental procedures, autopsies, and laboratories. Such waste shall be exclusive of bulk formaldehyde and other preservative agents;

(B) Liquid or semiliquid blood such as human blood, human blood components and products made from human blood, for example, serum and plasma, and other potentially infectious materials, to include regulated human body fluids such as semen, vaginal secretions, cerebrospinal fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids when it is difficult or impossible to differentiate between body fluids, not to include urine or feces, which cannot be discharged into the collection system of a publicly owned treatment works within the generating facility;

(C) Contaminated items, to include dressings, bandages, packings, gauze, sponges, wipes, cotton rolls and balls, etc., which cannot be laundered and from which blood, blood components, or regulated body fluids drip freely, or that would release blood or regulated body fluids in a liquid or semiliquid state if compressed or that are caked with dried blood or regulated body fluids and are capable of releasing these materials during handling:

(i) Disposable, single-use gloves such as surgical or examination gloves shall not be washed or decontaminated for reuse and are handled as a contaminated item; and

(ii) Protective coverings such as plastic wrap and aluminum foil used to cover equipment and environmental surfaces when removed following their contamination are considered a contaminated item;

(D) Microbiological waste — includes, but is not limited to, cells and tissue cultures, culture medium or other solution and stocks of infectious agents, organ cultures, culture dishes, devices used to transfer, inoculate, and mix cultures, paper and cloth which have come in contact with specimens or cultures, and discarded live vaccines; and

(E) Contaminated sharps, which includes, but is not limited to, hypodermic needles, intravenous tubing with needles attached, syringes with attached needles, razor blades used in surgery, scalpel blades, Pasteur pipettes, broken glass from laboratories, and dental wires;

(6) "Off-site" means any facility which is not on-site;

(7)(A) "On-site" means a facility on the same or adjacent property.

(B) "Adjacent" as used in this subdivision (7) means real property within four hundred yards (400 yds.) from the property boundary of the existing facility;

(8) "Person" means an individual or any legal entity;

(9) "Transport" means the movement of medical waste from the generator to any intermediate point and finally to the point of treatment or disposal; and

(10) "Treater or disposer" means any facility as defined in subdivision (3) of this section or a commercial medical waste incineration facility as defined in § 8-6-1302.

**History.** Acts 1992 (1st Ex. Sess.), No. 41, § 1; 1993, No. 491, § 2; 1993, No. 861, § 2; 2019, No. 389, § 51.

**Amendments.** The 2019 amendment repealed (2).

## 20-32-104. Disposition of fees and fines.

(a) All fees and fines levied and collected under §§ 20-32-103 and 20-32-107 are declared to be special revenues and shall be deposited into the State Treasury and credited to the Public Health Fund to be used exclusively for the enforcement of laws and regulations pertaining to the segregation, packaging, storage, transportation, treatment, and disposal of medical waste.

(b) Subject to such rules as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health may transfer all unexpended funds relative to the regulation of commercial medical waste that pertain to fees and fines collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

**History.** Acts 1992 (1st Ex. Sess.), No. 41, § 6; 2019, No. 315, § 2134.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (b).

## 20-32-105. Authorization to stop vehicles suspected of transporting commercial medical waste.

(a)(1) The Division of Arkansas State Police and the enforcement officers of the Arkansas Highway Police Division of the Arkansas Department of Transportation may stop vehicles suspected of transporting commercial medical waste to assure that all required permits for transporting the commercial medical waste have been obtained and to enforce all laws and rules relating to the transportation of commercial medical waste.

(2) The Division of Arkansas State Police may administer and supervise the program of inspection of vehicles which transport commercial medical waste and have a gross vehicle weight rating of less than ten thousand pounds (10,000 lbs.). The Division of Arkansas State Police shall collect a fee of fifty dollars ($50.00) for each inspection. The fee shall be deposited as special revenues into the State Treasury and distributed to the credit of the Division of Arkansas State Police Fund to defray the costs of administering and supervising the inspection program.

(b) The enforcement officers of the Arkansas Highway Police Division of the Arkansas Department of Transportation may conduct vehicle safety inspections of those vehicles transporting or intended to be utilized to transport commercial medical waste, to inquire into the history of any safety or equipment rule violations of the transporter in any state, and to advise the Department of Health of the results of such inspections and inquiries.

**History.** Acts 1992 (1st Ex. Sess.), No. 41, § 8; 1993, No. 412, § 1; 2017, No. 707, § 62; 2019, No. 315, §§ 2135, 2136.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (a)(1); and substituted "rule" for "regulation" in (b).

## 20-32-106. Rules.

(a) The Department of Health may regulate the segregation, packaging, storage, transportation, treatment, and disposal of commercial medical waste from healthcare-related facilities.

(b) These rules shall include:

(1) Criteria for issuing operational licenses to treaters or disposers, and transporters of commercial medical waste;

(2) Criteria for issuing permits and permit modifications to facilities;

(3) Developing a system for recordkeeping by any person generating, transporting, receiving, treating, or disposing of commercial medical waste;

(4) Acceptable methods of treatment and disposal of commercial medical waste;

(5) Requirements for the segregation, packaging, and storage of commercial medical waste;

(6) Criteria for the development of an operating plan for the handling and disposal of commercial medical waste; and

(7) Requirements for the inspection of any facility generating, storing, incinerating, or disposing of commercial medical waste.

(c) All rules promulgated pursuant to this chapter shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

**History.** Acts 1992 (1st Ex. Sess.), No. 41, §§ 2, 7; 1993, No. 491, § 3; 1993, No. 861, § 3; 1997, No. 179, § 30; 2019, No. 315, § 2137.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in the introductory language of (b); and deleted "and regulations" following "rules" in (c).

## 20-32-107. License to transport, treat, or dispose.

(a) No person may transport, treat, or dispose of commercial medical waste without first obtaining an operating license from the Department of Health.

(b) The treater or disposer, or transporter shall submit an application for an operating license and an application fee of two hundred fifty dollars ($250).

(c) Upon issuance of the operating license, the treater or disposer, or transporter shall pay a license fee of no more than five dollars ($5.00) per ton.

(d) The department shall issue operating licenses for a period of one (1) year.

(e)(1) If the treater or disposer, or transporter has a history of noncompliance with any law, rule, or regulation of this state or any other jurisdiction, particularly those laws, rules, or regulations pertaining to the environment and the protection of the health and safety of the public, the department may refuse to issue an operating license.

(2) If a history of noncompliance is discovered after the operating license has been issued, the department may revoke the license.

**History.** Acts 1992 (1st Ex. Sess.), No. 41, § 3; 1993, No. 491, § 4; 1993, No. 861, § 4; 2019, No. 315, § 2138.

**Amendments.** The 2019 amendment, in (e)(1), inserted "rule" and inserted "rules".

## 20-32-112. Violations — Penalties.

(a) Any person or carrier, or any officer, employee, agent, or representative thereof, while operating any vehicle transporting medical waste or which is authorized to transport medical waste, who shall violate any of the rules, including safety rules, prescribed or hereafter prescribed by the State Highway Commission pursuant to § 23-1-101 et seq. or who shall violate any rule of the Department of Health that specifically relates to the transportation of medical waste shall be guilty of a violation.

(b) Upon conviction, that person or carrier, or officer, employee, agent, or representative thereof, shall be fined not more than five hundred dollars ($500) for the first offense and not less than five

hundred dollars ($500) nor more than one thousand dollars ($1,000) for any subsequent offense.

**History.** Acts 1993, No. 412, § 2; 2005, No. 1994, § 129; 2019, No. 315, § 2139.

**Amendments.** The 2019 amendment, in (a), substituted "rules" for "regulations" twice and substituted "rule" for "regulation".

# CHAPTER 33

# ELDER CARE

SUBCHAPTER.

2. Criminal Records Checks for Persons Caring for the Elderly.

## Subchapter 2 — Criminal Records Checks for Persons Caring for the Elderly

SECTION.

20-33-213. Criminal history and registry records checks required — Definitions.

### 20-33-213. Criminal history and registry records checks required — Definitions.

(a) As used in this section:

(1) "Registry records check" means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person's suitability for licensure or certification as a service provider or employment with a service provider to provide care as defined in § 20-38-101; and

(2) "Service provider" means any of the following:

(A) A home- and community-based health services provider certified by the Department of Human Services;

(B) A home healthcare services agency as defined by § 20-10-801;

(C) A hospice program as defined by § 20-7-117; or

(D) A long-term care facility as defined by § 20-10-702.

(b) Beginning September 1, 2009, a service provider is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(c)(1) A person offered employment with a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(2)(A) A person who was offered employment by a service provider before September 1, 2009, was subject to a criminal history records check under §§ 20-33-201 — 20-33-212 [repealed], and has continued to be employed by the service provider who initiated the criminal history records check may continue employment with the service provider based on the results of the criminal history records check process conducted under §§ 20-33-201 — 20-33-212 [repealed].

(B) When the person next undergoes a periodic criminal history records check, the person's continued employment with the service provider is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(d)(1) The person who signs an application for licensure or certification as a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(2)(A) The person who signed an application for licensure or certification of a service provider before September 1, 2009, was subject to a criminal history records check under §§ 20-33-201 — 20-33-212 [repealed], and has continued to maintain the licensure or certification of the service provider may continue to maintain the licensure or certification of the service provider based on the results of the criminal history records check process conducted under §§ 20-33-201 — 20-33-212 [repealed].

(B) When the service provider next undergoes a periodic criminal history records check, the service provider's continued licensure or certification is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(e) The department shall establish by rule requirements for registry records checks for:

(1) An applicant for licensure or certification of a service provider;

(2) An applicant for employment with a service provider; and

(3) An employee of a service provider.

**History.** Acts 2009, No. 762, § 6; 2011, No. 1121, § 10; 2017, No. 591, § 3; 2017, No. 913, § 58; 2019, No. 318, § 5.

**Amendments.** The 2019 amendment deleted "the Division of Aging, Adult, and Behavioral Health Services of" following "certified by" in (a)(2)(A); and substituted "home healthcare services agency" for "home healthcare service" in (a)(2)(B).

# CHAPTER 36

# ARKANSAS BIOLOGICAL AGENT REGISTRY ACT

SECTION.



## 20-36-102. Definitions.

As used in this chapter:

(1) "Biological agent" means:

(A) Any select agent that is a microorganism, virus, bacterium, fungus, rickettsia, or toxin listed in 42 C.F.R., Part 72, Appendix A, as in effect on January 1, 2003;

(B) Any genetically modified microorganisms or genetic elements from an organism within 42 C.F.R., Part 72, Appendix A, as in effect on January 1, 2003, shown to produce or encode for a factor associated with a disease; or

(C) Any genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed within 42 C.F.R., Part 72, Appendix A, as in effect on January 1, 2003, or their toxic submits; and

(2) "Person" means any association, business, corporation, facility, firm, individual, institution of higher education, organization, partnership, society, state agency, or other legal entity.

**History.** Acts 2003, No. 1080, § 1; 2019, No. 389, § 52.

**Amendments.** The 2019 amendment deleted former (2) and redesignated (3) as (2).

# CHAPTER 38

# CRIMINAL BACKGROUND CHECKS



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**Effective Dates.** Acts 2019, No. 951, § 3: Apr. 12, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that use of the new Peer Support benefit in the Arkansas Medicaid Program is hindered by the inability under current rules to hire individuals who have committed drug-related offenses; that individuals who have served jail time can often have the most success in reaching individuals struggling with substance abuse addiction; that substance abuse is a growing issue for the State of Arkansas; that barriers should be removed to give providers all necessary resources to combat substance abuse; and that this act is immediately necessary to allow the Department of Human Services to make administrative rules at the earliest possible date to ensure the employment of individuals with drug-related offenses in the Peer Support benefit, to help reach individuals struggling with substance abuse addiction, and to combat substance abuse addiction. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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## 20-38-101. Definitions.

As used in this chapter:

(1) "Care" means treatment, services, assistance, education, training, instruction, or supervision for which the service provider is compensated either directly or indirectly;

(2) "Determination" means the determination made by the licensing or certifying agency that a service provider, operator, applicant for employment with, or employee of a service provider is or is not disqualified from licensure, exemption from licensure, certification, any other operating authority, or employment based on the criminal history of the service provider, operator, applicant, or employee;

(3)(A) "Employee" means any person who:

(i) Has unsupervised access to clients of a service provider, except as provided in subdivision (3)(B) of this section; and

(ii) Meets any of the following criteria:

*(a)* Provides care to clients of a service provider on behalf of, under the supervision of, or by arrangement with the service provider;

*(b)* Is employed by a service provider to provide care to clients of the service provider;

*(c)* Is a temporary employee placed by an employment agency with a service provider to provide care to clients of the service provider; or

*(d)* Resides in an alternative living home in which services are provided to individuals with developmental disabilities.

(B) "Employee" does not include a person who:

(i) Is a family member of a client receiving care from a service provider;

(ii) Is a volunteer; or

(iii) Works in an administrative capacity and does not have unsupervised access to clients of a service provider;

(4) "Licensing or certifying agency" means the state agency charged with licensing, exempting from licensure, certifying, or granting other operating authority to a service provider;

(5) "National criminal history records check" means a review of criminal history records maintained by the Federal Bureau of Investigation based on fingerprint identification or other positive identification methods;

(6) "Operator" means the person signing the application of a service provider for licensure, exemption from licensure, certification, or any other operating authority;

(7) "Registry records check" means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person's suitability for licensure, certification, exemption from licensure, or any other operating authority to be a service provider or for employment with a service provider to provide care;

(8) "Report" means a statement of the criminal history of a service provider, operator, applicant for employment with, or employee of a service provider issued by the Identification Bureau of the Department of Arkansas State Police;

(9) "Service provider" means any of the following:

(A) An Alternative Community Services Waiver Program provider certified by the Division of Developmental Disabilities Services;

(B) A childcare facility as defined by § 20-78-202;

(C) A church-exempt childcare facility as recognized under § 20-78-209;

(D) An early intervention program provider certified by the Division of Developmental Disabilities Services;

(E) A home- and community-based health services provider certified by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services;

(F) A home healthcare service under § 20-10-801;

(G) A hospice program under § 20-7-117;

(H) A long-term care facility as defined by § 20-10-702;

(I) A nonprofit community program as defined by § 20-48-101;

(J) An entity that provides personal care services to individuals;

(K) A long-term care facility under § 20-10-1202; or

(L) An entity that provides services to or houses teens and youths; and

(10) "State criminal history records check" means a review of state criminal history records conducted by the Identification Bureau of the Department of Arkansas State Police.

**History.** Acts 2009, No. 762, § 4; 2011, No. 1121, § 11; 2015, No. 1157, § 4; 2017, No. 591, § 4; 2017, No. 913, § 59; 2021, No. 761, § 1.

**Amendments.** The 2021 amendment deleted "of the Department of Human Services" following "Division of Development Disabilities Services" in (9)(A) and (9)(D); and added (9)(J) through (9)(L).

## 20-38-103. Criminal history records checks — Applicants and employees of service providers.

(a)(1) Before making an offer of employment, a service provider shall inform an applicant that employment is contingent on the satisfactory results of criminal history records checks.

(2) If a service provider intends to make an offer of employment to an applicant, the service provider shall conduct criminal history records checks on the applicant under this section.

(3) Except as provided in subdivision (a)(4) of this section, if the service provider can verify that the applicant has lived continuously in the state for the past five (5) years, the service provider shall require the applicant to submit a criminal history records check form and shall, in accordance with the rules of the appropriate licensing or certifying agency:

(A) Initiate a state criminal history records check on the applicant with the Identification Bureau of the Division of Arkansas State Police; and

(B) Conduct a registry records check on the applicant.

(4) If the service provider cannot verify that the applicant has lived continuously in the state for the past five (5) years or if the applicant is seeking employment at a childcare facility as defined by § 20-78-202 or a church-exempt childcare facility as recognized under § 20-78-209, regardless of the length of time that the applicant has lived in the state, the service provider shall require the applicant to submit a criminal history records check form and a complete set of fingerprints and shall:

(A) Initiate a state criminal history records check on the applicant with the Identification Bureau of the Division of Arkansas State Police;

(B) Initiate a fingerprint-based criminal history records check performed by the Federal Bureau of Investigation on the applicant; and

(C) Conduct a registry records check on the applicant.

(b) After a service provider satisfies the regulatory requirements of the appropriate licensing or certifying agency governing registry checks of applicants for employment, the service provider may conditionally employ an applicant pending receipt of a determination from the appropriate licensing or certifying agency.

(c) If a service provider uses temporary employees to provide care, the service provider shall:

(1) Use a contract to detail the requirements for placing temporary employees with the service provider; and

(2) Ensure that the contract pertaining to the service provider's use of temporary employees requires the entity providing the temporary employees to comply with the following terms:

(A) The entity is responsible for conducting a criminal history records check on each temporary employee under this subchapter before the placement of the temporary employee with the service provider; and

(B) The entity shall:

(i) Maintain all documentation regarding criminal history records checks for each temporary employee placed with a service provider;

(ii) Indicate whether each temporary employee placed with a service provider has been approved or disqualified in accordance with the rules of the appropriate licensing or certifying agency; and

(iii) Provide copies of the documentation to the service provider, which shall be made available to the appropriate licensing or certifying agency upon request.

(d) A service provider shall inform employees that continued employment is contingent on the satisfactory results of criminal history records checks and shall conduct periodic criminal history records checks on all employees no less than one (1) time every five (5) years.

(e)(1)(A) When a service provider initiates a request for a state criminal history records check on an applicant for employment with or an employee of the service provider, the Identification Bureau of the Division of Arkansas State Police shall issue within twenty-four (24) hours an electronic report to the licensing or certifying agency.

(B) When a licensing or certifying agency submits a request for a national criminal history records check on an applicant for employment with or an employee of the service provider, the Identification Bureau of the Division of Arkansas State Police shall issue a report to the licensing or certifying agency within ten (10) days after receipt of the results of the national criminal history records check from the Federal Bureau of Investigation.

(2) After receipt of a report from the Identification Bureau of the Division of Arkansas State Police, the licensing or certifying agency shall determine whether the applicant or employee is disqualified from employment with the service provider based on the criminal history of the applicant or employee and shall forward its determination to the service provider.

(3)(A)(i) If the licensing or certifying agency determines that an applicant or employee is disqualified from employment based on the criminal history of the applicant or employee, the service provider shall deny employment to the applicant or shall terminate the employment of the employee.

(ii)*(a)* If the applicant or employee is disqualified from employment based on the criminal history and the service provider wants to employ the applicant or continue to employ the employee, the service provider shall provide written notice to the licensing or certifying agency of the person's identity and that the service provider has determined that the person is not disqualified from employment because the person satisfies the criteria for a waiver under § 20-38-105(d)(3).

*(b)* After receipt of written acknowledgment from the licensing or certifying agency that the service provider has determined that the applicant or employee is not disqualified from employment because the person satisfies the criteria for a waiver under § 20-38-105(d)(3), the service provider may employ the applicant or continue the employment of the employee.

(B) If the licensing or certifying agency issues a determination that an applicant or employee is not disqualified from employment or if there is no criminal history on an applicant or employee, the service provider may employ the applicant or continue the employment of the employee.

(f)(1) If the subject of a criminal history records check has been offered employment with a childcare facility or a church-exempt childcare facility, the subject of a criminal history records check shall not be assessed a fee for the statewide criminal history records check required under this section.

(2) The subject of a criminal history records check shall be responsible for the payment of any fee associated with the nationwide criminal history records check.

(g) A person may challenge the completeness or accuracy of his or her criminal history information under § 12-12-1013.

**History.** Acts 2009, No. 762, § 4; 2013, No. 990, § 1; 2015, No. 861, § 6; 2017, No. 572, § 1; 2019, No. 318, §§ 6-8.

**Amendments.** The 2019 amendment added "in accordance with the rules of the appropriate licensing or certifying agency" at the end of the introductory language of (a)(3) and deleted the same language from the end of (a)(3)(B) and (a)(4)(C); rewrote (a)(4)(B); inserted (c)(2)(B)(ii), and added the (c)(2)(B)(i) and (iii) designations; substituted "licensing or certifying agency submits" for "service provider initiates" in (e)(1)(B); and made stylistic changes.

**20-38-105. Disqualification from employment — Denial or revocation — Penalties.**

(a)(1) Except as provided in subsection (d) of this section, the licensing or certifying agency shall issue a determination that a person is disqualified as a service provider, operator, or from employment with a service provider if the person has pleaded guilty or nolo contendere to or has been found guilty of:

(A) Any of the offenses listed in subsection (b) of this section by any court in the State of Arkansas;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

(2) Except as provided in subsection (d) of this section, a service provider shall not knowingly employ a person and the licensing or certifying agency shall not knowingly contract with, license, exempt from licensure, certify, or otherwise authorize a person to be a service provider if the person has pleaded guilty or nolo contendere to or has been found guilty of:

(A) Any of the offenses listed in subsection (b) of this section by any court in the State of Arkansas;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

(b) As used in this section, the following criminal offenses apply to this section unless the record of the offense is expunged, pardoned, or otherwise sealed:

(1) Criminal attempt, § 5-3-201, criminal complicity, § 5-3-202, criminal solicitation, § 5-3-301, or criminal conspiracy, § 5-3-401, to commit any of the offenses in this subsection;

(2) Capital murder, § 5-10-101;

(3) Murder, §§ 5-10-102 and 5-10-103;

(4) Manslaughter, § 5-10-104;

(5) Negligent homicide, § 5-10-105;

(6) Kidnapping, § 5-11-102;

(7) False imprisonment, §§ 5-11-103 and 5-11-104;

(8) Permanent detention or restraint, § 5-11-106;

(9) Robbery, §§ 5-12-102 and 5-12-103;

(10) Battery, §§ 5-13-201 — 5-13-203;

(11) Assault, §§ 5-13-204 — 5-13-207;

(12) Coercion, § 5-13-208;

(13) Introduction of a controlled substance into the body of another person, § 5-13-210;

(14) Terroristic threatening, § 5-13-301;

(15) Terroristic act, § 5-13-310;

(16) Any sexual offense, § 5-14-101 et seq.;

(17) Voyeurism, § 5-16-102;

(18) Death threats concerning a school employee or student, § 5-17-101;

(19) Incest, § 5-26-202;

(20) Domestic battery, §§ 5-26-303 — 5-26-306;
(21) Interference with visitation, § 5-26-501;
(22) Interference with court-ordered custody, § 5-26-502;
(23) Endangering the welfare of an incompetent person, §§ 5-27-201 and 5-27-202;
(24) Endangering the welfare of a minor, §§ 5-27-205 and 5-27-206;
(25) Contributing to the delinquency of a minor, § 5-27-209;
(26) Contributing to the delinquency of a juvenile, § 5-27-220;
(27) Permitting abuse of a minor, § 5-27-221;
(28) Soliciting money or property from incompetent persons, § 5-27-229;
(29) Engaging children in sexually explicit conduct for use in visual or print media, § 5-27-303;
(30) Pandering or possessing a visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
(31) Transportation of minors for prohibited sexual conduct, § 5-27-305;
(32) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
(33) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
(34) Computer crimes against minors, § 5-27-601 et seq.;
(35) Felony abuse of an endangered or impaired person, § 5-28-103;
(36) Theft of property, § 5-36-103;
(37) Theft of services, § 5-36-104;
(38) Theft by receiving, § 5-36-106;
(39) Forgery, § 5-37-201;
(40) Criminal impersonation, § 5-37-208;
(41) Financial identity fraud, § 5-37-227;
(42) Arson, § 5-38-301;
(43) Burglary, §§ 5-39-201 and 5-39-204;
(44) Breaking or entering, § 5-39-202;
(45) Resisting arrest, § 5-54-103;
(46) Felony interference with a law enforcement officer, § 5-54-104;
(47) Cruelty to animals, §§ 5-62-103 and 5-62-104;
(48) Felony violation of the Uniform Controlled Substances Act, § 5-64-101 et seq.;
(49) Public display of obscenity, § 5-68-205;
(50) Promoting obscene materials, § 5-68-303;
(51) Promoting obscene performance, § 5-68-304;
(52) Obscene performance at a live public show, § 5-68-305;
(53) Prostitution, § 5-70-102;
(54) Patronizing a prostitute, § 5-70-103;
(55) Promotion of prostitution, §§ 5-70-104 — 5-70-106;
(56) Stalking, § 5-71-229;
(57) Criminal use of a prohibited weapon, § 5-73-104;
(58) Simultaneous possession of drugs and firearms, § 5-74-106;
(59) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(60) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; and

(61) Sexual extortion, § 5-14-113.

(c)(1) The provisions of this subsection shall not be waived by the licensing or certifying agency.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, a conviction or plea of guilty or nolo contendere for any of the offenses listed in this subsection, whether or not the record of the offense is expunged, pardoned, or otherwise sealed, shall result in permanent disqualification from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider and is not subject to subsection (d) of this section:

(A) Any of the following offenses by any court in the State of Arkansas:

(i) Capital murder, § 5-10-101;

(ii) Murder in the first degree, § 5-10-102;

(iii) Murder in the second degree, § 5-10-103;

(iv) Kidnapping, § 5-11-102;

(v) Rape, § 5-14-103;

(vi) Sexual assault in the first degree, § 5-14-124;

(vii) Sexual assault in the second degree, § 5-14-125;

(viii) Endangering the welfare of an incompetent person in the first degree, § 5-27-201;

(ix) Abuse of an endangered or impaired person, § 5-28-103, if it is a felony;

(x) Arson, § 5-38-301;

(xi) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; and

(xii) Sexual extortion, § 5-14-113;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

(3) For purposes of licensure as a childcare facility, exemption from licensure as a church-exempt childcare facility, or employment with a childcare facility or church-exempt childcare facility, a conviction or plea of guilty or nolo contendere for any offense that involves violence or a sexual act, whether or not the record of the offense is expunged, pardoned, or otherwise sealed, may result in permanent disqualification from licensure as a childcare facility, exemption from licensure as a church-exempt childcare facility, or employment with a childcare facility or church-exempt childcare facility and may not be subject to subsection (d) of this section.

(d)(1) This section shall not disqualify a person from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for a misdemeanor offense;

(B) The date of the conviction or plea of guilty or nolo contendere is at least five (5) years from the date of the request for the criminal history records check; and

(C) The person has no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the five-year period preceding the criminal history records check request.

(2) This section shall not disqualify a person from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for a felony offense;

(B) The date of the conviction or plea of guilty or nolo contendere is at least ten (10) years from the date of the background check request; and

(C) The individual has no criminal convictions or pleas of guilty or nolo contendere during the ten-year period preceding the request for a criminal history records check.

(3) This section does not disqualify a person from employment with a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for any of the nonviolent offenses listed below:

(i) Theft by receiving, § 5-36-106;

(ii) Forgery, § 5-37-201;

(iii) Financial identity fraud, § 5-37-227;

(iv) Resisting arrest, § 5-54-103;

(v) Criminal impersonation in the second degree, § 5-37-208(b);

(vi) Interference with visitation, § 5-26-501;

(vii) Interference with court-ordered custody, § 5-26-502;

(viii) Prostitution, § 5-70-102; and

(ix) Patronizing a prostitute, § 5-70-103;

(B) The service provider wants to employ the person;

(C) The person remains in employment with the same service provider;

(D) The person has completed probation or parole supervision, paid all court-ordered fees or fines, including restitution, and fully complied with all court orders pertaining to the conviction or plea;

(E) The person will be employed by:

(i) A long-term care facility licensed by the Office of Long-Term Care;

(ii) An intermediate care or other facility, developmental day treatment clinic services provider, or group home licensed or certified by the Division of Developmental Disabilities Services; or

(iii) A childcare facility or a church-exempt childcare facility licensed by the Division of Child Care and Early Childhood Education;

(F) Subsequent to employment, the person does not plead guilty or nolo contendere to or is found guilty of any offense in subsection (b) of this section; and

(G) The person does not have a true or founded report of child maltreatment or adult maltreatment in a central registry.

(e) A person shall not be disqualified from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if the person has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor offense not listed in subsection (b) of this section, a similar misdemeanor offense in another state, or a similar federal misdemeanor offense.

(f) Even if the person would otherwise be disqualified under this section, a person shall not be disqualified from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if the person:

(1) Was not disqualified on August 31, 2009; and

(2) Since August 31, 2009, has not been found guilty of or pleaded guilty or nolo contendere to:

(A) An offense listed in subsection (b) of this section;

(B) A similar offense in another state; or

(C) A similar federal offense.

(g) Notwithstanding any other provision of law, a person is not disqualified from employment if:

(1) The person is employed as or being considered for employment as a peer support specialist or other similar position requiring that the person has personally received services within the behavioral health system;

(2) The person works or is applying to work with individuals receiving substance abuse treatment; and

(3) The only offense on the person's criminal background check that would disqualify him or her from employment is an offense that does not involve violence or a sexual act.

**History.** Acts 2009, No. 762, § 4; 2011, No. 516, §§ 1-3; 2013, No. 990, § 2; 2013, No. 1132, §§ 25, 26; 2017, No. 367, §§ 25, 26; 2017, No. 664, §§ 19, 20; 2017, No. 1077, § 1; 2019, No. 951, § 1.

**Amendments.** The 2019 amendment added (g).

## 20-38-106. Evidence of criminal history records checks.

(a) A service provider shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Identification Bureau of the Division of Arkansas State Police, or the licensing or certifying agency evidence that criminal history records checks have been completed on all operators, applicants for employment, and employees of the service provider and evidence that all operators, applicants for employment, and employees of the service provider have been approved or disqualified in accordance with the rules of the appropriate licensing or certifying agency.

(b) If a service provider employs an applicant or continues the employment of an employee who satisfied the criteria for a waiver under § 20-38-105(d)(3), the service provider shall maintain documen-

tation that the person met the criteria for the waiver, including the written acknowledgment by the licensing or certifying authority.

**History.** Acts 2009, No. 762, § 4; 2013, No. 990, § 3; 2019, No. 318, § 9.

**Amendments.** The 2019 amendment added "and evidence that all operators, applicants for employment, and employees of the service provider have been approved or disqualified in accordance with the rules of the appropriate licensing or certifying agency" in (a).

### 20-38-113. Automated abuse registry checks.

The Department of Human Services shall:

(1)(A) Contingent upon the receipt of funding, appropriation, and positions, create and maintain a program that automates the databases of the Child Maltreatment Central Registry created in § 12-18-901, the Adult and Long-term Care Facility Resident Maltreatment Central Registry created in § 12-12-1716, and the Certified Nursing Assistant/Employment Clearance Registry maintained by the Office of Long-Term Care under 42 C.F.R. § 483.156 and § 20-10-203.

(B) The program created and maintained under subdivision (1)(A) of this section shall allow an entity or person required to conduct a registry check under a registry listed in subdivision (1)(A) of this section to access all three (3) registries through a single web-based process;

(2) Streamline the process of requesting a registry check so that all forms authorizing the release of confidential information under a registry listed in subdivision (1)(A) of this section are consistent; and

(3) Adopt rules to implement this section.

**History.** Acts 2013, No. 748, § 1; 2019, No. 389, § 53.

**Amendments.** The 2019 amendment deleted the (a) designation; deleted "no later than July 1, 2016" following "program" in (1)(A); deleted (b); and updated internal references.

## *SUBTITLE 3. MENTAL HEALTH*

## CHAPTER 45

## GENERAL PROVISIONS

SUBCHAPTER.



### Subchapter 3 — Arkansas Suicide Prevention Council

SECTION.

**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-45-302. Creation and purpose.

(a) There is established the "Arkansas Suicide Prevention Council".

(b) The purpose of the council is to serve as a central body on suicide prevention efforts across the state, including without limitation:

(1) Setting priorities for statewide, data-driven, evidence-based, and clinically informed suicide prevention in Arkansas;

(2) Providing a public forum to examine the current status of suicide prevention and intervention policies, priorities, and practices;

(3) Identifying interested parties, community, state, and national prevention providers and stakeholders for collaboration and devising a system of gathering data and other information to ensure coordination of suicide prevention resources and services throughout Arkansas;

(4) Assisting private, nonprofit, and faith-based entities, including without limitation coalitions, foundations, initiatives, churches, veterans groups, substance abuse recovery groups, senior adult organizations, grief support groups, injury prevention groups, and other groups to enhance suicide prevention and survivor support efforts; and

(5) Aiding in the development of evaluation tools and data collection for use in reporting suicide prevention efforts to the public.

(c) Within sixty (60) days of July 22, 2015, there shall be appointed to the council no more than twenty-three (23) members, including:

(1) A representative of the office of the Attorney General, to be designated by the Attorney General;

(2) A representative of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, to be designated by the Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services;

(3) A representative of the Division of Elementary and Secondary Education, to be designated by the Commissioner of Elementary and Secondary Education;

(4) A representative of the Division of Youth Services, to be designated by the head of the Division of Youth Services;

(5) A representative of Arkansas Children's Hospital, to be designated by the President and Chief Executive Officer of Arkansas Children's Hospital;

(6) A representative of law enforcement, to be designated by the Director of the Division of Arkansas State Police;

(7) A representative from higher education, to be designated by the Director of the Division of Higher Education;

(8) A representative from kindergarten through grade twelve (K-12) education, to be designated by the Arkansas Education Association;

(9) A representative from an employee assistance program or human resources in the private sector, to be designated by the Governor;

(10) A licensed mental health professional, to be designated by the Governor;

(11) A representative of substance-abuse treatment providers, to be designated by the Governor;

(12) A representative of primary medical care providers, to be designated by the Governor;

(13) A representative of first responders, to be designated by the Governor;

(14) A representative from a hospital with an on-site emergency department, to be designated by the Governor;

(15) A hospital-based social worker, to be designated by the Governor;

(16) An elected coroner, to be designated by the Governor;

(17) An active member or veteran of any branch of the United States Armed Forces, to be designated by the Governor;

(18) Two (2) family members of persons who died by suicide, to be designated by the Governor;

(19) A person who has attempted suicide, recovered, and is now thriving, to be designated by the Governor;

(20) A representative of the suicide prevention nonprofit community, to be designated by the Governor;

(21) A representative of the Arkansas Prevention Network, to be designated by the President of the Arkansas Prevention Network; and

(22) A representative from an interfaith organization, to be designated by the Governor.

(d) The council shall elect annually two (2) cochairs, a vice chair, and a secretary who will serve as an executive board.

(e)(1) The council shall establish a charter and bylaws within ninety (90) days of the first meeting.

(2) A quorum for conducting business is one-half (½) of the appointed members.

(f)(1) The council shall meet at least four (4) times each year.

(2) The council shall meet at times and places that the cochairs deem necessary, but no meeting shall be held outside the state.

(3) Special meetings may be held at the call of the cochairs, as needed.

(g)(1) The appointed members of the council shall serve staggered terms of four (4) years with no more than two (2) contiguous terms.

(2) If a vacancy occurs in an appointed position, the vacancy shall be filled for the unexpired term by an appointment made in the same manner as the original appointment.

(h) Appointments shall:

(1) Represent persons of different ethnic backgrounds;

(2) Include members from each of Arkansas's four (4) congressional districts; and

(3) Include members with expertise from groups associated with high suicide rates and suicide attempts.

(i)(1) The members of the council shall serve without compensation but may seek reimbursement for travel expenses to and from meetings of the council.

(2) The expense reimbursement shall be paid by the Department of Health from moneys available for that purpose.

(j) The Department of Health shall provide staff and programmatic support for the council to the extent that funding is available.

(k) The Department of Health is the designated agency for the purposes of suicide prevention and related state and federal programmatic and funding applications.

(l) Within the first year of its creation, the council shall make recommendations to the General Assembly on staffing and funding needs to implement an effective statewide suicide prevention program.

**History.** Acts 2015, No. 1067, § 1; 2017, No. 913, § 60; 2019, No. 910, §§ 2293, 2294; 2019, No. 1091, § 5.

**Amendments.** The 2019 amendment by No. 910, in (c)(3), substituted "Division of Elementary and Secondary Education" for "Department of Education" and substituted "Commissioner of Elementary and Secondary Education" for "Commissioner of Education"; substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (c)(6); and substituted "Division of Higher Education" for "Department of Higher Education" in (c)(7).

The 2019 amendment by No. 1091 substituted "Two (2) family members of persons" for "A family member of a person" in (c)(18); and deleted (c)(23).

## 20-45-303. Suicide Prevention Hotline.

(a)(1) The Department of Health shall establish and maintain, to the extent that funding is available, the Suicide Prevention Hotline for the purpose of helping to prevent suicide in the state.

(2) The department may contract with vendors to maintain the Suicide Prevention Hotline.

(3) The department shall ensure that the Suicide Prevention Hotline employs individuals who have experience working with veterans or are veterans.

(b)(1) The Suicide Prevention Hotline shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number.

(2) The toll-free telephone number under this section shall be known as the "Suicide Prevention Hotline".

(3)(A) The Suicide Prevention Hotline shall be part of the National Suicide Prevention Lifeline network by utilizing existing telephone, text, and online chat communications.

(B) The Suicide Prevention Hotline shall meet all accreditation requirements set forth by the United States Substance Abuse and

Mental Health Services Administration and the National Suicide Prevention Lifeline.

(c) All persons may use the Suicide Prevention Hotline to assist in preventing suicide throughout the state.

**History.** Acts 2017, No. 811, § 1; 2021, No. 640, § 1.

**Amendments.** The 2021 amendment added (a)(3); and made stylistic changes.

# CHAPTER 46

# MENTAL HEALTH AGENCIES AND FACILITIES

SUBCHAPTER.



## Subchapter 1 — General Provisions

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-46-105. Report concerning emotionally disturbed youth.

(a)(1) The Department of Human Services shall report monthly to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth or appropriate subcommittees thereof the number of children placed in residential and inpatient treatment programs, including sexual offender treatment, when Medicaid is the payment source.

(2) The monthly report shall include the following information:

(A) The total number of males and the total number of females placed in in-state residential programs and the total number of males and the total number of females placed in inpatient acute psychiatric programs, excluding sexual offender treatment programs, that were paid for by Medicaid during the previous month;

(B) The total number of males and the total number of females placed in out-of-state residential programs and the total number of males and the total number of females placed in inpatient acute psychiatric programs, excluding sexual offender treatment programs, that were paid for by Medicaid during the previous month;

(C) The total number of males and the total number of females placed in in-state residential and inpatient sexual offender treatment programs that were paid for by Medicaid during the previous month;

(D) The total number of males and the total number of females placed in out-of-state residential and inpatient sexual offender treatment programs that were paid for by Medicaid during the previous month;

(E) The total amount of money paid by Medicaid for the previous month for in-state residential and inpatient psychiatric programs with sexual offender treatment programs, residential and acute separately identified;

(F) The total amount of money paid by Medicaid for the previous month for out-of-state residential and inpatient psychiatric programs with sexual offender treatment programs, residential and acute separately identified;

(G) The total number of juveniles in residential and inpatient programs, including sexual offender treatment programs, that were paid for by Medicaid during the previous month;

(H) The total number of juveniles in residential and inpatient programs, including sexual offender treatment programs, that were paid for by Medicaid during the previous month, who are within fifty (50) miles of an Arkansas border; and

(I) The total number of juveniles in residential and inpatient programs, including sexual offender treatment programs, that were paid for by Medicaid during the previous month, who are more than fifty (50) miles from an Arkansas border.

(b) The report under this section shall include the number of placements for the previous month and the cumulative total number of placements for each fiscal year as of the date of the latest monthly report.

(c) The Legislative Council may request at any time that such additional information as it deems necessary be provided by the department.

(d) The deputy director of the appropriate division of the department as determined by the Secretary of the Department of Human Services shall certify by his or her signature that the information contained in these reports is correct to the best of his or her knowledge.

**History.** Acts 1985, No. 779, § 21; 1997, No. 179, § 31; 2003, No. 278, § 1; 2005, No. 1958, § 1; 2013, No. 1132, § 28; 2019, No. 910, § 5191.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (d).

## 20-46-107. Colocation for outpatient behavioral healthcare agencies — Legislative findings.

(a) The General Assembly finds that:

(1) Sites for outpatient behavioral healthcare agencies have been prohibited from being adjunct to or colocated with nonbehavioral healthcare services or facilities;

(2) Integrated care is a best practice and should be the standard set in this state; and

(3) It would be advantageous for a client's health if outpatient behavioral health services were colocated with primary care services or facilities.

(b) Outpatient behavioral healthcare agencies may be certified when adjunct to or colocated with nonbehavioral healthcare services or facilities such as a school, a daycare facility, a long-term care facility, or the office or clinic of a physician or psychologist.

**History.** Acts 2021, No. 760, § 1.

## Subchapter 3 — Community Mental Health Centers



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**Effective Dates.** Acts 2019, No. 875, § 32: July 1, 2019, except §§ 23, 29. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2019 is essential to the operation of the agency for which the appropriations in this Act are provided; with the exception that Sections 23 and 29 in this Act shall be in full force and effect from and after the date of its passage and approval, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2019, with the exception that Sections 23 and 29 in this Act shall be in full force and effect from and after the date of its passage and approval, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2019; with the exception that Sections 23 and 29 in this Act shall be in full force and effect from and after the date of its passage and approval."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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## 20-46-301. Department of Human Services — Division of Aging, Adult, and Behavioral Health Services — Powers and duties.

(a) The Department of Human Services shall have the authority and power to create and maintain the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services and to provide services for community mental health clinics and centers, which shall be administered through such divisions, offices, sections, or units of the Department of Human Services as may be determined by the Secretary of the Department of Human Services.

(b) The Department of Human Services shall have the authority to establish or assist in the establishment and direction of those mental health clinics and centers in local and regional areas of the state which shall be operated under such divisions, offices, sections, or units of the Department of Human Services as may be determined by the secretary.

(c) The Department of Human Services, in cooperation with the Building Authority Division, may sell, donate, lease on a short-term or long-term basis, or assign the use of any property and equipment owned by the Department of Human Services, including real property, furniture, fixtures, and office equipment and supplies, to those community mental health clinics and centers to assist them in the advancement of mental health in the state.

(d) The Department of Human Services shall engage in programs of mental health education in cooperation with the state's governmental units and established mental health education organizations, organized civic groups, lay organizations, and recognized mental health authorities, utilizing therefor the facilities of those organizations and groups for the advancement of mental health.

(e)(1) In the event that a state-operated community mental health center acquires private nonprofit status, the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall have the authority to lease employees of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services to perform services for the private nonprofit community mental health center to ensure the continued delivery of satisfactory

levels of mental health services consistent with the goals and objectives of the Department of Human Services and the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(2) The secretary shall have the authority to negotiate an employee leasing arrangement with the private nonprofit community mental health center as an ongoing contract to perform mental health services for the center. The arrangement shall provide, at a minimum:

(A) For reimbursement for all leased Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services employee financial obligations with respect to wages, employment taxes, and employee benefits of each employee providing services for the center and for reimbursement of administrative costs associated with the leased employees;

(B) That all leased employees are covered by workers' compensation insurance provided in conformance with laws of the state and which may be provided by either the Department of Human Services or the center;

(C) That all leased employees shall be limited to providing services to clients or in support of clients which are consistent with the goals and objectives of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services and the Department of Human Services;

(D) That the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services and the Department of Human Services shall not be vicariously liable for the liabilities of the center, whether contractual or otherwise;

(E) That the center shall provide liability insurance for the employees and indemnify the state for any actions of the employees; and

(F) That the leasing arrangement shall not be effective for a period of time to exceed each state fiscal biennium and that payment and performance obligations of the arrangement are subject to the availability and appropriation of funds for the employees' salaries and other benefits.

(3)(A) Employer responsibilities for leased employees shall be shared by the Department of Human Services and the community mental health center.

(B) The Department of Human Services shall be responsible for the administration and management of employee compensation and all employee benefit and welfare plans.

(C) The center may exercise day-to-day supervision and control of the employees' delivery of services in conformity with all Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services and Department of Human Services policies and procedures.

**History.** Acts 1971, No. 433, ch. 2, § 1; 1985, No. 348, § 7; A.S.A. 1947, § 59-301; Acts 1993, No. 410, § 2; 2005, No. 2009, § 1; 2013, No. 980, § 7; 2013, No. 1132, § 29; 2013, No. 1251, § 1; 2015 (1st Ex. Sess.), No. 7, § 20; 2015 (1st Ex. Sess.), No. 8, § 20; 2017, No. 913, §§ 61, 62; 2019, No. 910, §§ 5192, 5193.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (a); substituted "secretary" for "director" in (b) and in the introductory language of (e)(2); and deleted "of the Department of Finance and Administration" preceding "may sell" in (c).

## 20-46-302. Department of Human Services — Power to regulate — Funding.

(a) The Arkansas State Hospital shall have the power to establish guidelines and rules in the administration of this section.

(b)(1) The Arkansas State Hospital through the Department of Human Services is authorized and empowered to assist community mental health centers and clinics in providing funds for medication required for the treatment of mental illness for medically indigent patients at a rate not to exceed five cents (5¢) per capita of the geographical area served by those community mental health centers or clinics.

(2) The most recent federal census will be used in determining the per capita of the area on which an allocation is made.

(c)(1) Disbursement of funds authorized by this section shall be limited to the appropriations for the department and funds made available by law for the support of the appropriations.

(2) The restrictions of the Arkansas Procurement Law, § 19-11-201 et seq.; the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq.; the Revenue Stabilization Law, § 19-5-101 et seq.; and other fiscal control laws of the state, where applicable, and rules promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of the funds.

**History.** Acts 1972 (1st Ex. Sess.), No. 54, §§ 1, 2, 4; A.S.A. 1947, §§ 59-312 — 59-314; Acts 2019, No. 315, §§ 2140, 2141.

**Amendments.** The 2019 amendment substituted "guidelines and rules" for "guidelines, rules, and regulations" in (a); and substituted "rules" for "regulations" in (c)(2).

## 20-46-303. Standards generally.

In approving or rejecting community mental health clinics for the purpose of mental health services, the Secretary of the Department of Human Services shall consider the following factors:

(1) Adequacy of mental health services provided by the clinic, including mental health outpatient diagnostic and treatment services;

(2) Rehabilitative services for patients suffering from mental or emotional disorders;

(3) Collaborative and cooperative services with public health and other state, county, city, and private groups for programs of prevention and treatment of mental illness and other psychiatric, psychological, and social disabilities;

(4) Consultative services to schools, to courts, and to health and welfare agencies, both public and private;

(5) Informational and educational services to the general public and to lay and professional groups; and

(6) Study and training activities in the field of mental health.

**History.** Acts 1971, No. 433, ch. 2, § 3; A.S.A. 1947, § 59-303; Acts 2019, No. 910, § 5194.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in the introductory language.

## 20-46-309. Composition and qualifications of staff and boards.

The Secretary of the Department of Human Services shall require the following as to the composition and professional qualifications of the clinic or center staff and control and direction of the clinic or center:

(1) The community mental health center or clinic should have an administrator who will be responsible for the management and affairs of the agency in accordance with regulations set forth by the National Institute of Mental Health, and as required by local boards of directors;

(2) Medical responsibility for each patient must be vested in a physician. If that physician is not a psychiatrist, psychiatric consultation must be available to the center staff on a continuing and regularly scheduled basis;

(3) The clinic or center staff shall include other professional staff such as psychologists, social workers, and nurses with such qualifications, responsibilities, and time on the job as shall correspond with the size and capacity of the clinic; and

(4) Each clinic or center from which services may be purchased shall be under the control or direction of a county or community board of directors or trustees of a corporation not for profit or a political subdivision of the state. The local board shall have at least one (1) member from each of the various counties for which funds are received by the organization. However, no county shall have more than a simple majority of members on the board unless that county has within it more than fifty percent (50%) of the population of the total area from which the corporation received mental health funds.

**History.** Acts 1971, No. 433, ch. 2, § 3; A.S.A. 1947, § 59-303; Acts 2019, No. 910, § 5195.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in the introductory language.

## 20-46-310. Duty to provide screenings and evaluation studies.

Mental health centers in this state, whether local or regional, which have been approved by the Secretary of the Department of Human Services shall provide, upon request of the courts of record in this state, screening and evaluation studies of such persons as shall be referred to the mental health center or clinic by the court.

**History.** Acts 1971, No. 433, ch. 2, § 8; A.S.A. 1947, § 59-308; Acts 2019, No. 910, § 5196.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services".

## 20-46-316. Funding report.

(a) On or before April 30, July 31, October 31, and January 31 of each year, the Department of Human Services shall report the following data to the Legislative Council or the Joint Budget Committee during a regular, fiscal, or extraordinary session:

(1) A list of community mental health centers that are budgeted to receive funding from the State of Arkansas;

(2) The total annual amount of general revenue budgeted by the department for the current fiscal year of the reporting period;

(3) The total annual amount of general revenue distributed in the previous fiscal year to each community mental health center;

(4) The amount of state funding distributed each reporting quarter, budgeted fiscal year to date, and total projected for the fiscal year to each community mental health center;

(5) The amount of federal funding distributed each reporting quarter, budgeted fiscal year to date, and total projected for the fiscal year to each community mental health center; and

(6) The amount of other funding, listed by funding source, individually distributed each reporting quarter, budgeted fiscal year to date, and total projected for the fiscal year to each community mental health center.

(b) Each quarterly report shall cover the immediate preceding calendar quarter and appropriate fiscal year.

**History.** Acts 2019, No. 875, § 21.

### Subchapter 5 — Intensive Residential Treatment

SECTION.


## 20-46-502. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1)(A) "Adults with long-term severe mental illness" means a person, eighteen (18) years of age or over, who meets criteria for service eligibility as defined by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(B) Individuals whose sole disability results from alcoholism, drug abuse, or intellectual or other developmental disability are excluded from this definition; and

(2)(A) "Intensive residential treatment program" means a nonhospital establishment with permanent facilities which provides a twenty-four-hour program of care by qualified therapists, including, but not

limited to, licensed mental health professionals, psychiatrists, psychologists, psychotherapists, and licensed certified social workers for adults who have severe long-term mental illness but who are not in an acute phase of illness requiring the services of a psychiatric hospital, and who are in need of supervision or restorative treatment services.

(B) An establishment furnishing primarily domiciliary care is not within this definition.

**History.** Acts 1987, No. 648, § 2; 2013, No. 980, § 13; 2017, No. 913, § 69; 2019, No. 1035, § 14.

**Amendments.** The 2019 amendment inserted "intellectual or other" in (1)(B).

## 20-46-504. Rules.

(a) The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall adopt, promulgate, and enforce the rules and standards that may be necessary for the accomplishment of this subchapter.

(b) The rules and standards shall be modified, amended, or rescinded from time to time by the division as may be in the public interest.

**History.** Acts 1987, No. 648, § 4; 2013, No. 980, § 13; 2017, No. 913, § 71; 2019, No. 315, § 2142.

**Amendments.** The 2019 amendment deleted "and regulations" following "Rules" in the section heading; and deleted "regulations" following "rules" in (a) and (b).

## Subchapter 6 — Mental Illness and Substance Abuse

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

### 20-46-601. Tracking and treatment of persons suffering from mental illness and substance abuse — Definition.

(a) The General Assembly finds that:

(1) Persons who suffer from mental illness and who abuse various chemical substances contribute disproportionately to the problem of violence in our society; and

(2) It is the purpose of this section to establish a utilization review and treatment program to reduce violence among persons who suffer from mental illness and who abuse chemical substances without a costly expansion of the Arkansas State Hospital.

(b) For purposes of this section, "client" means a person diagnosed to be addicted to drugs or alcohol who has been committed to the custody of the Secretary of the Department of Human Services pursuant to § 5-2-314 as a result of acquittal, on the ground of mental disease or defect, of an offense involving bodily injury to another person or serious risk of such injury.

(c) The Department of Human Services shall establish a system to:

(1) Provide case management of clients;

(2) Provide one (1) or more secure residential treatment facility or facilities designed to treat clients;

(3) Provide community crisis stabilization beds for clients;

(4) Provide client assessment and admission to treatment programs as necessary; and

(5) Review treatment utilization and track clients.

(d) The department is authorized to enter into contracts with any public or private nonprofit entity for the purpose of implementing this section.

**History.** Acts 1995, No. 1208, §§ 1-4; 2019, No. 910, § 5197.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (b).

## Subchapter 7 — Providers of Assistance to Indigent Persons

SECTION.



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health,

and safety shall become effective on July 1, 2019."

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**20-46-702. Definitions.**

(a) As used in this subchapter:

(1)(A) "Brief hold" means holding a resident without undue force for twenty (20) minutes or less in order to calm or comfort the resident.

(B) In no event shall a brief hold be construed as a personal restraint;

(2) [Repealed.]

(3) [Repealed.]

(4) "Program provider" means any psychiatric residential treatment facility for children or outpatient mental health services funded by a medical care program for indigent persons;

(5)(A) "Seclusion" means a behavior-control technique involving the involuntary confinement of a resident in locked isolation.

(B) In no event shall verbal direction be construed as seclusion;

(6) "Serious injury" means any significant impairment of the physical condition of the resident whether self-inflicted or inflicted by someone else as determined by the provider's qualified medical personnel, including, but not limited to:

(A) Burns;

(B) Lacerations;

(C) Bone fractures;

(D) Substantial hematoma; and

(E) Injuries to internal organs, whether self-inflicted or inflicted by someone else;

(7) "Serious occurrence" means a resident's death, serious injury, or suicide attempt;

(8) "Suicide attempt" means any action taken by a resident for the purpose of inflicting death or serious injury to the resident as determined by the provider's qualified medical personnel;

(9) "Survey" means any process by which compliance with federal law and regulations applicable to a program provider is determined;

(10) "Survey team" means an individual or individuals employed by or under contract with the Department of Human Services or its divisions; and

(11)(A) "Time-out" means a behavior-management technique that involves the separation of a resident from other residents for a period of time to a designated area from which the resident is not physically prevented from leaving.

(B) In no event shall a time-out be construed as a seclusion.

(C) In no event shall verbal direction be construed as time-out.

(b) The definitions in this section apply to any survey conducted upon any psychiatric residential treatment facility or outpatient mental health services funded by a medical care program for indigent persons.

**History.** Acts 2005, No. 1885, § 1; 2019, No. 389, § 54; 2019, No. 910, § 5198.

**Amendments.** The 2019 amendment by No. 389 repealed (2) and (3).

The 2019 amendment by No. 910 repealed (3).

## 20-46-703. Surveys of program providers.

(a) The survey team shall:

(1) Conduct an exit conference during every survey;

(2) Allow electronic signatures and dates and dictated dates to serve as service delivery documentation;

(3) To the extent possible, conduct patient interviews in a manner that does not disrupt patient care or suggest a particular response from the interviewee;

(4) Conduct follow-up surveys on an accelerated schedule only upon a finding that a program provider is not in substantial compliance with applicable laws and rules; and

(5)(A) Allow the program provider the option to submit to the surveyor within one (1) working day of an entrance interview a written summary of incident and accident reports instead of the actual reports.

(B) The requirements of subdivision (a)(5)(A) of this section shall not prevent the Department of Human Services from accessing all records related to the survey within any time frames established by federal law or regulation.

(b) A corrective action response shall be submitted to the survey team within thirty (30) days after the program provider receives the report, but the time allowed for submitting the corrective action response shall be extended up to sixty (60) days upon request of the program provider.

(c) For purposes of compliance with the Arkansas Medicaid Program, program providers shall be prohibited from reporting serious occurrences to another entity other than the department and, if applicable, to the Centers for Medicare & Medicaid Services.

(d) The Secretary of the Department of Human Services shall ensure that the department complies with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and with § 20-77-107 in regard to all surveys of program providers.

**History.** Acts 2005, No. 1885, § 1; 2019, No. 315, § 2143; 2019, No. 910, § 5199.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a)(4).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (d).

# CHAPTER 47

# TREATMENT OF PERSONS WITH MENTAL ILLNESS

SUBCHAPTER.



## Subchapter 2 — Commitment and Treatment

SECTION.



### 20-47-202. Definitions.

As used in this subchapter:

(1) "Administrator" means the chief administrative officer or executive director of any private or public facility or of any community mental health center certified by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services;

(2) "Behavior history" means a person's statements or actions on specific occasions as established by the person's declarations, observations of others, or records;

(3) "Community mental health center" means a program and its affiliates established and administered by the state, or a private, nonprofit corporation certified by the division for the purpose of providing mental health services to the residents of a defined geographic area and which minimally provides twenty-four-hour emergency, inpatient, outpatient, consultation, education, prevention, partial care, follow-up and aftercare, and initial screening and precare services. The division may contract with a community mental health center for the operation and administration of any services which are part of the state mental health system;

(4) "Crisis response services" means immediate or emergency treatment. Because mental illnesses are often of an episodic nature, there will be instances that require acute and quick crisis response services;

(5) [Repealed.]

(6) "Detention" means any confinement of a person against his or her wishes and begins either:

(A) When a person is involuntarily brought to a receiving facility or program or to a hospital;

(B) When, pursuant to § 20-47-209(a), the person appears for the initial hearing; or

(C) When a person on a voluntary status in a receiving facility or program or a hospital requests to leave pursuant to § 20-47-204(3);

(7) [Repealed.]

(8) "Hospital" means the University of Arkansas for Medical Sciences Medical Center, the United States Department of Veterans Affairs hospitals, or any private hospital with a fully trained psychiatrist on the active or consultant staff;

(9) "Initial screening" means initial screening services conducted by a mental health professional provided by a receiving facility or program for individuals residing in the area served by the receiving facility or program who are being considered for referral to inpatient programs of the state mental health system to determine whether or not the individual meets the criteria for voluntary or involuntary admission and to determine whether or not appropriate alternatives to institutionalization are available. These screening services shall be available to community organizations, agencies, or private practitioners who are involved in making referrals to the state mental health system;

(10) "Involuntary admission" means:

(A) Court-ordered admission to twenty-four-hour inpatient health care;

(B) Immediate confinement under § 20-47-210; or

(C) Admission to outpatient behavioral healthcare services furnished by a receiving facility or program or a behavioral healthcare clinic certified by the division;

(11) "Least restrictive appropriate setting" for treatment means the available treatment setting which provides the person with the highest likelihood of improvement or cure and which is not more restrictive of the person's physical or social liberties than is necessary for the most effective treatment of the person and for adequate protection against any dangers which the person poses to himself or herself or others;

(12)(A) "Mental illness" means a substantial impairment of emotional processes, the ability to exercise conscious control of one's actions, or the ability to perceive reality or to reason, when the impairment is manifested by instances of extremely abnormal behavior or extremely faulty perceptions.

(B) Mental illness does not include impairment solely caused by:

(i) Epilepsy;

(ii) Intellectual or other developmental disability;

(iii) Continuous or noncontinuous periods of intoxication caused by substances such as alcohol or drugs; or

(iv) Dependence upon or addiction to any substance such as alcohol or drugs;

(13) "Physician" means a medical doctor licensed to practice in Arkansas;

(14) "Psychosurgery" means those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for the purpose of the following:

(A) Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain;

(B) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior; or

(C) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions, or behavior when the abnormality is not an established cause of those thoughts, feelings, actions, or behavior;

(15) "Receiving facility or program" means an inpatient or outpatient treatment facility or program which is designated within each geographic area of the state by the Deputy Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services to accept the responsibility for care, custody, and treatment of persons involuntarily admitted to the state mental health system;

(16)(A) "Resides" means a person's ongoing physical presence in the state together with indications that the person's presence in the state is something other than merely transitory.

(B) "Resides" includes a temporary absence from the state or temporary physical presence in a city that adjoins the Arkansas state line or is separated only by a navigable river from an Arkansas city that adjoins the Arkansas state line;

(17)(A) "Restraint" means any manual method, physical or mechanical device, material, or equipment that immobilizes a person or reduces the ability of a person to move his or her arms, legs, body, or head freely.

(B) "Restraint" does not include devices such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a person for the purpose of protecting the person from falling or to permit the person to participate in activities without the risk of physical harm to himself or herself;

(18) "State mental health system" means the Arkansas State Hospital and any other facility or program licensed or certified by the division;

(19) "State or local authority" means a state or local government authority or agency or a representative of a state or local government authority or agency acting in an official capacity;

(20) "Treatment" means those psychological, educational, social, chemical, medical, somatic, or other techniques designed to bring about rehabilitation of persons with mental illness. Treatment may be provided in inpatient and outpatient settings; and

(21) "Treatment plan" means an individualized written document developed by the treatment staff of the hospital or receiving facility or program which includes the following:

(A) A substantiated diagnosis in the terminology of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders;

(B) Short-term and long-term treatment goals;

(C) Treatment programs, facilities, and activities to be utilized to achieve the treatment goals; and

(D) Methods for periodic review and revision of the treatment plan.

**History.** Acts 1989, No. 861, § 1; 1993, No. 410, § 1; 2003, No. 1473, § 41; 2003, No. 1789, § 1; 2007, No. 636, § 3; 2011, No. 823, § 1; 2013, No. 573, § 1; 2017, No. 913, §§ 74-79; 2019, No. 389, §§ 55, 56; 2019, No. 1035, § 15.

**Amendments.** The 2019 amendment by No. 389 repealed (5) and (7).

The 2019 amendment by No. 1035 substituted "Intellectual or other developmental" for "Developmental" in (12)(B)(ii).

## 20-47-210. Immediate confinement — Initial evaluation and treatment.

### CASE NOTES

**Timely Hearing.**

Circuit court properly denied a patient's motion to dismiss his involuntary commitment to a treatment facility for issues related to his mental health because a probable cause hearing was held within 72 hours of a petition being filed, and that petition was likewise filed within 72 hours of the patient's detention. Springer v. Jensen, 2020 Ark. App. 435 (2020).

## 20-47-211. Notification of rights.

### RESEARCH REFERENCES

**ALR.** Right to Counsel in Civil Commitment Proceedings for the Mentally Ill. 33 A.L.R.7th Art. 5 (2018).

## 20-47-212. Appointment of counsel.

### RESEARCH REFERENCES

**ALR.** Right to Counsel in Civil Commitment Proceedings for the Mentally Ill. 33 A.L.R.7th Art. 5 (2018).

## Subchapter 3 — Residential Care Facilities

SECTION.



## 20-47-303. Multihour daily service rate reimbursement — Definitions.

(a) As used in this section:

(1) "Congregate setting" means a location within a residential care facility, an assisted living facility, or a designated residential setting of

a nonprofit community program as defined in § 20-48-101 or its nonprofit affiliates;

(2) "Designated residential setting" includes the following when operated by a nonprofit community program as defined in § 20-48-101:

(A) A group home for individuals with developmental disabilities in operation and licensed by the Division of Developmental Disabilities Services on or before July 1, 1995;

(B) A community residential home established after July 1, 1995, that serves individuals with developmental disabilities and provides housing for no more than four (4) unrelated persons; or

(C) An apartment complex established after July 1, 1995, that serves individuals with developmental disabilities; and

(3)(A) "Intermediate care facility for individuals with developmental disabilities" means a residential institution maintained for the care and training of individuals with developmental disabilities, including without limitation individuals with intellectual disabilities.

(B) "Intermediate care facility for individuals with developmental disabilities" has the same meaning as "intermediate care facility for individuals with intellectual disabilities" or "ICF/IID" under federal law.

(b)(1)(A) The Department of Human Services shall reimburse residential care facilities, assisted living facilities, and qualified nonprofit community programs with a multihour daily service rate for personal care services delivered in congregate settings as provided in this section and approved by the Centers for Medicare & Medicaid Services.

(B) The application of subdivision (b)(1)(A) of this section to nonprofit community programs is subject to available funds.

(2) The department shall maintain Medicaid provider rules appropriate for the delivery of personal care services in congregate settings and the related multihour daily service rate reimbursement methodology.

(3) The department shall make best efforts to obtain and maintain approval from the Centers for Medicare & Medicaid Services for a multihour daily service rate reimbursement for personal care services delivered in congregate settings.

(c) The department shall provide copies to the Administrative Rules Subcommittee of the Legislative Council, providers, and the public of all state plan amendments, documentation, and correspondence submitted to or received from the Centers for Medicare & Medicaid Services in regard to this section and shall work jointly with provider representatives in obtaining and maintaining approval for a multihour daily service rate for personal care services delivered in congregate settings from the Centers for Medicare & Medicaid Services.

(d)(1) The Division of Medical Services shall use the same multihour daily service rate reimbursement methodology for personal care services delivered in a congregate setting located in a designated residential setting of a nonprofit community program as defined in § 20-48-101

as for personal care services delivered in a congregate setting located in a residential care facility and an assisted living facility.

(2) Reimbursement for personal care services under this section is not available to an individual with a developmental disability who resides in an intermediate care facility for individuals with developmental disabilities.

**History.** Acts 1999, No. 1421, § 3; 2011, No. 560, § 1; 2011, No. 1156, § 2; 2019, No. 315, §§ 2144, 2145.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (b)(2); and deleted "and Regulations" following "Rules" in (c).

## Subchapter 4 — Cooperation Among Institutions

SECTION.



### 20-47-406. Department of Human Services agreements for medical care of indigent individuals with mental illness, intellectual and developmental disabilities, or tuberculosis.

(a) The Arkansas State Hospital and other state institutions are authorized to enter into agreements with the Department of Human Services to establish and maintain a medical care program for indigent individuals with mental illness, intellectual and developmental disabilities, or tuberculosis at the Arkansas State Hospital and any other state institution and to transfer funds to the Department of Human Services Fund pursuant to the agreement.

(b) The agreement made between the Arkansas State Hospital or other institution and the department shall be in compliance with federal law and shall meet qualifications necessary for federal funds to be paid for the care of indigent individuals with mental illness, intellectual and developmental disabilities, or tuberculosis in the Arkansas State Hospital or other institution.

(c) In order to reimburse the fund for expenditures made by the department in accordance with agreements made with the Arkansas State Hospital and other institutions, the Chief Fiscal Officer of the State shall make rules for transfers from the respective State Treasury funds or accounts from which the institutions making agreements derive their financial support to the fund in keeping with the provisions of the agreement made between the Arkansas State Hospital or other state institutions and the department.

**History.** Acts 1971, No. 433, ch. 3, §§ 29-31; A.S.A. 1947, §§ 59-429 — 59-431; 2019, No. 315, § 2146; 2019, No. 389, § 57; 2019, No. 1035, § 16.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (c).

The 2019 amendment by No. 389 substituted "individuals with mental illness, intellectual disabilities, or tuberculosis" for "mentally ill or tubercular" in the section heading; and substituted "individuals with mental illness, intellectual disabilities, or tuberculosis" for "mentally ill, mentally retarded, and tubercular" in (a) and (b).

The 2019 amendment by No. 1035 substituted "individuals with intellectual and developmental disabilities" for "mentally retarded" in (a); and substituted "intellectually and developmentally disabled" for "mentally retarded" in (b).

## Subchapter 5 — Child and Adolescent Service System Program



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-47-505. Child and Adolescent Service System Program Coordinating Council.

(a)(1) There is created a Child and Adolescent Service System Program Coordinating Council that shall meet on a quarterly basis and at other times deemed necessary to perform its functions.

(2) The council shall include the following persons to be selected and appointed by the Commissioner of Elementary and Secondary Education and the Secretary of the Department of Human Services:

(A) At least three (3) parents, parent surrogates, or family members of a child or children with emotional disturbance;

(B) A member of an ethnic minority;

(C) A child advocate;

(D) Child and Adolescent Service System Program coordinators from each of the certified community mental health centers;

(E)(i) One (1) or more representatives from specific divisions or agencies in the Department of Human Services and the Division of Elementary and Secondary Education.

(ii) Each representative shall have official duties related to the delivery of behavioral health services for children and adolescents with emotional disturbances.

(iii) Specific designations of membership of the council shall be determined through interdepartmental and intradepartmental agreements that will be renewed on an annual basis; and

(F)(i) At least seven (7) representatives from private or public agencies or organizations that are stakeholders in behavioral health services for children and adolescents with emotional disturbances.

(ii) The commissioner and the secretary shall jointly appoint an appropriate number of stakeholders.

(b) The council shall:

(1) Advise and report to the commissioner and the secretary on matters of policy and programs related to children with emotional disturbances and their families;

(2) Identify and recommend fiscal, policy, training, and program initiatives and revisions based on needs identified in the planning process;

(3) Provide specific guidelines for the development of regional services and plans based on the guiding principles of the system of care;

(4) Review and approve regional plans developed by regional program teams and incorporate the regional plans into the statewide plan;

(5) Ensure that mechanisms for accountability are developed and implemented;

(6) Submit a statewide plan and budget recommendations to the commissioner and the secretary on or before March 15 of each even-numbered year thereafter preceding the legislative session;

(7) Develop and recommend special projects to the commissioner and the secretary;

(8) Provide a written report on a quarterly basis to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth that summarizes progress implementing this subchapter;

(9) Establish guidelines and procedures for the voting membership, officers, and annual planning of both the council and the regional program planning teams which the council will review and update on an annual basis; and

(10) Make recommendations for corrective action plans to the commissioner and the secretary in the event that a regional program planning team does not produce a timely regional plan that meets a plan of care or fails to implement the approved regional plan.

**History.** Acts 1991, No. 964, § 5; 1997, No. 312, § 16; 2001, No. 1517, § 4; 2005, No. 2209, § 2; 2013, No. 1132, § 31; 2019, No. 910, §§ 2295, 2296, 5200-5203.

**Amendments.** The 2019 amendment, in the introductory language of (a)(2), substituted "Commissioner of Elementary and Secondary Education" for "Commis-

sioner of Education" and "Secretary of the Department of Human Services" for "Director of the Department of Human Services"; substituted "Division of Elementary and Secondary Education" for "Department of Education" in (a)(2)(E)(i); and substituted "secretary" for "director" throughout the section.

## 20-47-507. Child and Adolescent Service System Program Coordinating Council staff.

(a) The staff for the Child and Adolescent Service System Program Coordinating Council shall be provided by the Child and Adolescent Service System Program project for the first two (2) years and subsequently by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(b) The division shall serve as the coordinating agency and shall develop and support the regional program team network and the council and shall provide training and technical assistance relevant to the system of care.

(c) Annual site reviews and program evaluations of regional program teams will be coordinated by the division and shall involve a multiagency team of professionals, family members, consumers, and advocates.

(d) The division's council staff shall provide an annual report summarizing program regional and coordinating council activities, strategic plans, and outcomes to the Secretary of the Department of Human Services and the Commissioner of Elementary and Secondary Education each year on or before October 15.

**History.** Acts 1991, No. 964, § 7; 2001, No. 1517, § 6; 2005, No. 2209, § 5; 2017, No. 913, § 86; 2019, No. 910, § 5204.

**Amendments.** The 2019 amendment, in (d), substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" and "Commissioner of Elementary and Secondary Education" for "Commissioner of Education".

## 20-47-508. Evaluation and treatment.

(a) Children suspected of having emotional disturbances who are referred for Child and Adolescent Service System Program services shall be given a screening and assessment through the single point of entry, after which an initial interagency service plan shall be defined and developed.

(b) The community mental health centers are hereby designated as the single point of entry.

(c) The assessment shall be conducted by the community mental health center serving the area in which the child or adolescent lives.

(d) The community mental health center shall be accessible on a twenty-four-hour basis, shall accept referrals from multiple sources, have interagency linkages, involve parents, ensure immediate access to crisis intervention services, and have authority to seek needed services.

(e) If after screening and assessment or collaborative evaluations it is determined that a child with emotional disturbance needs multiagency services, then initial and subsequent individualized multiagency

service plans for the child and the child's family shall be jointly developed by the appropriate local or regional representatives of the community mental health centers, of the Department of Human Services county office, of the Department of Health, of the Special Education Unit of the Division of Elementary and Secondary Education, of the local school district, and of any other service provider identified to meet the needs of the child and his or her family. The individualized service plan shall reflect an integrated service delivery that specifies services or programs with funding to be provided by each agency. The service plan shall also designate responsibility for case management.

**History.** Acts 1991, No. 964, § 8; 2001, No. 1517, § 7; 2019, No. 757, § 68; 2019, No. 910, § 2297.

**Amendments.** The 2019 amendment by No. 757 substituted "Special Education Unit" for "Special Education Section" in the first sentence of (e).

The 2019 amendment by No. 910 substituted "Division of Elementary and Secondary Education" for "Department of Education" in the first sentence of (e).

### 20-47-510. Coordination and oversight — Annual reports.

(a) The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services is designated the state agency responsible for the coordination and oversight of the Comprehensive Children's Behavioral Health System of Care Plan.

(b) All state agencies that receive funding, either state or federal, shall participate in collaborative planning for the system of care to support behavioral health services for children and adolescents.

(c) Each state agency that receives funding, either state or federal, to support behavioral health services for children and adolescents shall:

(1)(A) Enter into an interagency collaborative agreement with the division on or before July 2005 with regard to the responsibilities of each agency in the development and implementation of the Comprehensive Children's Behavioral Health System of Care Plan.

(B) The agreements shall be updated annually; and

(2) Submit all pertinent information, including expenditures and programming data, to the division in the time and manner established through the collaborative agreements.

(d)(1) On or before April 15, 2006, for the fiscal year beginning July 1, 2006, and annually thereafter, the division shall submit the state plan for the comprehensive child and adolescent system of care to:

(A) The Secretary of the Department of Education, the Secretary of the Department of Health, and the Secretary of the Department of Human Services; and

(B) The House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

(2) The state plan for the Child and Adolescent Service System Program Comprehensive Children's Behavioral Health System of Care Plan shall include, but not be limited to:

(A) The projected budget for each state agency that will be used to support behavioral health services;

(B) Prevention and early intervention;

(C) The service array and capacity for services supported through public funds that are available statewide and county by county; and

(D) An assessment of service deficits with recommendations for a plan to address service deficits with available funds.

(e)(1) On or before October 15, 2006, for the fiscal year beginning July 1, 2005, and annually thereafter, the division shall submit a report concerning the operation of the Comprehensive Children's Behavioral Health System of Care Plan to:

(A) The Secretary of the Department of Education, the Secretary of the Department of Health, and the Secretary of the Department of Human Services; and

(B) The House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

(2) The report shall include, but not be limited to:

(A) Actual funds expended for child and adolescent behavioral health services;

(B) Prevention and early intervention services;

(C) Service utilization data at all levels of care; and

(D) Outcome data for the system of care.

**History.** Acts 2005, No. 2209, § 6; 2013, No. 1132, §§ 32, 33; 2017, No. 913, § 87; 2019, No. 910, §§ 5041, 5042.

**Amendments.** The 2019 amendment substituted "Secretary of the Department of Education, the Secretary of the Department of Health, and the Secretary of the Department of Human Services" for "Commissioner of Education, and the Director of the Department of Health, and the Director of the Department of Human Services" in (d)(1)(A); and substituted "Secretary of the Department of Health, and the Secretary of the Department of Human Services" for "Director of the Department of Health, and the Director of the Department of Human Services" in (e)(1)(A).

## Subchapter 7 — Arkansas System of Care for Behavioral Healthcare Services for Children and Youth Act

SECTION.



### 20-47-705. Behavioral healthcare initiatives.

The Department of Human Services, with advice from the Children's Behavioral Health Care Commission, shall:

(1) Identify and implement actions for ensuring that children, youth, and their families are full partners in the design and implementation of all aspects of the system of care as well as full partners in decisions about their care or their children's care;

(2) Identify up to two million dollars ($2,000,000) per year to apply to the following purposes:

(A) Meeting extraordinary, non-Medicaid-reimbursable needs of children, youth, and their families, as identified in multiagency plans of services;

(B) Supporting creation or strengthening of entities designed to guide the development and operation of local, regional, and state components of the system of care;

(C) Strengthening family and advocate skills and capacity to provide meaningful input on the system of care; and

(D) Supporting the development and enhancement of needed behavioral healthcare services in underserved areas;

(3) Revise Medicaid rules to increase quality, accountability, and appropriateness of Medicaid-reimbursed behavioral healthcare services, including, but not limited to:

(A) Clarifying behavioral healthcare services definitions to assure that the definitions are appropriate to the needs of children, youth, and their families;

(B) Revising the process for Medicaid to receive, review, and act upon requests for behavioral health care for children and youth classified as seriously emotionally disturbed;

(C) Clarifying Medicaid certification rules for providers serving children, youth, and their families to assure that the certification rules correlate with the requirements for enrollment as a Medicaid provider of behavioral healthcare services;

(D)(i) Defining a standardized screening and assessment process designed to provide early identification of conditions that require behavioral healthcare services.

(ii) The standardized process shall ensure that:

*(a)* Assessments guide service decisions, outcomes, and, if appropriate, development of a multiagency plan of services; and

*(b)* Services delivered are appropriate to meet the needs of the child as identified by the assessment;

(4) Research, identify, and implement innovative and promising local, regional, or statewide approaches for better managing the state's resources devoted to children's behavioral health; and

(5) Create additional capacity within the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services to develop, support, and oversee the new system of care for behavioral healthcare services for children, including:

(A)(i) Selecting a new outcomes measurement tool to support an improved system of tracking, accountability, and decision-making.

(ii) The new outcomes measurement tool shall be selected no later than September 30, 2015, and shall replace the current outcomes measurement tool for purposes of reporting required in § 20-47-510; and

(B) Creating additional staff support to provide technical assistance, utilize information, identify and encourage best practices, monitor performance, and recommend system improvements.

**History.** Acts 2007, No. 1593, § 1; 2015, No. 161, § 1; 2017, No. 913, § 90; 2019, No. 315, § 2147.

**Amendments.** The 2019 amendment deleted "and regulations" following "rules" in the introductory language of (3).

## Subchapter 8 — Behavioral Health Crisis Intervention Protocol Act of 2017



### 20-47-801. Title.

RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Amie Alexander & Sarah Giammo, Survey of Legislation 2017: Arkansas General Assembly, 40 U. Ark. Little Rock L. Rev. 305 (2017).

### 20-47-802. Legislative intent.

(a) It is the intent of the General Assembly to create an established protocol for crisis intervention by law enforcement agencies and jail personnel, the court system, hospitals, healthcare providers, and mental health professionals to address the methods and procedures to be used by law enforcement agencies and jail personnel, the court system, hospitals, healthcare providers, and mental health professionals in engaging with an individual who demonstrates substantial likelihood of committing bodily harm against himself or herself, or against another person, and who is an individual with a behavioral health impairment, mental disability, mental illness, or other permanent or temporary behavioral health or mental impairment.

(b) Further, it is the intent of the General Assembly that the behavioral health crisis intervention protocol created under this subchapter and established to address engagement with a member of the public who is an individual with a behavioral health impairment results not in prosecution or incarceration but in treatment of the individual in a voluntary clinical setting until his or her behavioral health impairment is managed to the point that the individual is substantially less likely to commit a criminal or otherwise dangerous act.

**History.** Acts 2017, No. 423, § 36; 2021, No. 989, § 1.

**Amendments.** The 2021 amendment substituted "treatment of the individual in a voluntary clinical setting" for "a lawful detention of the individual" in (b).

**20-47-804. Crisis intervention protocol not exclusive — Voluntary stay at crisis stabilization unit.**

(a) If during or after the initiation of a crisis intervention protocol under this subchapter a mental health professional or medical professional believes the individual being treated would benefit more from a longer commitment in a residential facility, the mental health professional or medical professional may institute commitment proceedings as authorized under § 20-47-201 et seq.

(b) If a commitment proceeding is initiated under § 20-47-201 et seq. in a court with jurisdiction, that proceeding shall control and any custodial detention or treatment as part of a crisis intervention protocol initiated under this subchapter shall cease in lieu of any commitment or treatment ordered by the court.

(c)(1) A crisis intervention protocol may be ended before the maximum detention time of ninety-six (96) hours has elapsed, as described under § 20-47-810, by the crisis stabilization unit that has custody of the individual at its discretion if:

(A) The individual in treatment under this subchapter agrees to remain at the crisis stabilization unit voluntarily;

(B) The treating crisis stabilization unit reasonably believes that the individual would not be a danger to himself or herself or to others if he or she remained at the crisis stabilization unit voluntarily; and

(C) The crisis stabilization unit agrees to allow the individual to remain at the crisis stabilization unit.

(2)(A) An individual who remains at a crisis stabilization unit voluntarily under this subsection is free to leave the crisis stabilization unit at any time.

(B) A crisis stabilization unit may:

(i) Discharge an individual who is released from custody and remains at the crisis stabilization unit voluntarily at its discretion; and

(ii) As part of the discharge process, provide the person with a follow-up treatment plan and a request that the person utilize the treatment plan, including subsequent appointments with a mental health professional.

**History.** Acts 2017, No. 423, § 36; 2021, No. 989, § 2.

**Amendments.** The 2021 amendment substituted "treated" for "detained" in (a); in the introductory language of (c)(1), substituted "ninety-six (96) hours" for "seventy-two (72) hours" and substituted "crisis stabilization unit" for "law enforcement agency"; substituted "treatment" for "custody" in (c)(1)(A); substituted "treating crisis stabilization unit" for "detaining law enforcement agency" in (c)(1)(B); deleted "is released from custody and" following "individual who" in the introductory language of (c)(2)(A); and deleted "and subject to the consent of the person no longer in custody" following "discharge process" in (c)(2)(B)(ii).

**20-47-805. Establishment of crisis intervention teams.**

(a) As part of a crisis intervention protocol established under this subchapter, a law enforcement agency or community mental health

center, as a participating partner, is authorized to establish a crisis intervention team or multiple crisis intervention teams to provide psychiatric emergency services and triage and referral services for individuals with a behavioral health impairment who demonstrate substantial likelihood of committing bodily harm against themselves or against another person as a more humane alternative to confinement in a jail.

(b) A crisis intervention team shall have at least one (1) designated hospital or community mental health center within the specified crisis stabilization unit catchment area that has agreed to serve as a crisis stabilization unit and to provide psychiatric emergency services, triage and referral services, and other appropriate medical services for individuals identified by a crisis intervention team officer or who have been referred by the community mental health center within the specified crisis stabilization unit catchment area.

(c)(1) As a participating partner and serving as a crisis stabilization unit, a hospital, community mental health center, or mental health facility may establish a comprehensive psychiatric emergency service to provide psychiatric emergency services to an individual with a behavioral health impairment for a period of time greater than allowed in a hospital or other facility's emergency department when, in the opinion of the treating physician, psychiatric nurse practitioner, or psychiatric physician assistant, the individual is likely to be stabilized within ninety-six (96) hours so that continuing treatment can be provided in the local community rather than a crisis stabilization unit or the Arkansas State Hospital.

(2)(A) During the time an individual with a behavioral health impairment is under a crisis intervention protocol and in treatment at a crisis stabilization unit, the individual is considered to be in treatment on a voluntary basis.

(B) This subchapter does not authorize the forfeiture of any state or federal constitutional right regarding the detention and custody of an individual with a behavioral health impairment who has been detained or placed in custody due to the commission of a criminal offense.

(d)(1) Two (2) or more governmental entities may jointly provide crisis intervention teams and comprehensive psychiatric emergency services authorized under this subchapter.

(2) For the purpose of addressing unique rural service delivery needs and conditions, the Department of Human Services may authorize two (2) or more hospitals, community mental health centers, or mental health services providers to collaborate in the development of crisis intervention teams and comprehensive psychiatric emergency services and shall facilitate any collaboration authorized.

**History.** Acts 2017, No. 423, § 36; 2021, No. 989, § 3.

**Amendments.** The 2021 amendment substituted "identified by" for "in the custody of" in (b); substituted "ninety-six (96) hours" for "seventy-two (72) hours" in (c)(1); and, in (c)(2)(A), substituted "in treatment" for "detained" following "inter-

vention protocol and" and substituted "in treatment on a voluntary basis" for "in the custody of the law enforcement agency that detained the individual".

**20-47-809. Implementation of psychiatric emergency services.**

(a)(1) To implement psychiatric emergency services under a crisis intervention protocol under this subchapter, a crisis stabilization unit shall request licensure from the Department of Human Services for the number of extended observation beds that are required to adequately serve the designated crisis stabilization unit catchment area.

(2) A license for the requested extended observation beds is required before the crisis stabilization unit may put the extended observation beds into service for patients.

(b) If the Department of Human Services determines that psychiatric emergency services under this subchapter are adequate to provide for the privacy and safety of all patients receiving services in the crisis stabilization unit, the Department of Human Services may approve the location of one (1) or more of the extended observation units within another area of the single point of entry rather than in proximity to the emergency department.

(c) Each crisis stabilization unit shall provide or contract to provide qualified physicians, licensed mental health professionals, psychiatric nurse practitioners, psychiatric physician assistants, and ancillary personnel necessary to provide services twenty-four (24) hours per day, seven (7) days per week.

(d)(1) A psychiatric emergency service provided by a crisis stabilization unit shall have at least one (1) physician, one (1) psychiatric nurse practitioner, one (1) psychiatric physician assistant, or one (1) mental health professional who is a member of the staff of the crisis stabilization unit and who is on duty and available at all times.

(2) However, the medical director of the crisis stabilization unit may waive the requirement under subdivision (d)(1) of this section if provisions are made for:

(A) A physician in the emergency department to assume responsibility and provide initial evaluation and treatment of an individual with a behavioral health impairment in the custody of a crisis intervention team officer or referred by the community mental health center;

(B) A licensed mental health professional to screen and assess an individual with a behavioral health impairment within thirty (30) minutes of notification that the individual has arrived; and

(C) The physician, psychiatric nurse practitioner, psychiatric physician assistant, or mental health professional on call for the psychiatric emergency service to evaluate the individual with a behavioral health impairment onsite within twelve (12) hours of the individual's admission.

(3) A crisis stabilization unit is encouraged to use telemedicine under this subchapter to the extent it is effective and authorized by state law.

**History.** Acts 2017, No. 423, § 36; 2021, No. 989, § 4.

**Amendments.** The 2021 amendment substituted "units" for "beds" following "extended observation" in (b); and substituted "crisis stabilization unit" for "psychiatric emergency service" in (c) and the introductory language of (d)(2).

## 20-47-810. Ninety-six-hour maximum time of detention.

(a) An individual with a behavioral health impairment who is admitted to a crisis stabilization unit under a crisis intervention protocol under this subchapter shall have a final disposition within a maximum of ninety-six (96) hours or remain on a voluntary basis.

(b) If the individual with a behavioral health impairment cannot be stabilized within ninety-six (96) hours of entering into a crisis intervention protocol, a participating partner may institute commitment proceedings as authorized under § 20-47-201 et seq.

(c) As part of the discharge process after the ninety-six-hour stay has expired, a crisis stabilization unit shall provide the individual with a follow-up treatment plan and a request that the individual utilize the treatment plan, including subsequent appointments with a mental health professional.

**History.** Acts 2017, No. 423, § 36; 2021, No. 989, § 4.

**Amendments.** The 2021 amendment substituted "Ninety-six hour" for "Seventy-two hour" in the section heading; substituted "ninety-six (96) hours" for "seventy-two (72) hours" in (a) and (b); in (a), substituted "crisis stabilization unit" for "psychiatric emergency service", and substituted "remain on a voluntary basis" for "be released from custody"; deleted former (c), and redesignated former (d) as (c); and, in (c), substituted "ninety-six hour stay" for "seventy-two hour hold", deleted "and the individual is being released from custody, and subject to the consent of the individual no longer in custody" following "has expired", and substituted "shall provide" for "may provide".

## 20-47-812. Development of crisis intervention protocols.

(a)(1) A local criminal justice coordinating committee shall actively encourage hospitals, community mental health centers, mental health services providers, and other mental health professionals to develop psychiatric emergency services.

(2) If a collaborative agreement can be negotiated with a hospital, community mental health center, or other healthcare facility that can provide a comprehensive psychiatric emergency service, that hospital, community mental health center, or other healthcare facility shall be given priority when designating the single point of entry.

(b) The local criminal justice coordinating committee shall encourage community mental health center directors to actively work with hospitals, mental health services providers, other mental health professionals, the Department of Human Services, and law enforcement agencies to develop a crisis intervention protocol and associated crisis intervention teams and psychiatric emergency services and shall facilitate the development of those collaborations.

**History.** Acts 2017, No. 423, § 36; 2021, No. 989, § 5.

**Amendments.** The 2021 amendment substituted "A local criminal justice coordinating committee" for "A director of a community mental health center" in (a)(1); and, in (b), substituted "The local criminal justice coordinating committee" for "The Department of Human Services" and inserted "the Department of Human Services".

## Subchapter 10 — Mental Health Services for Individuals who are Deaf or Hard of Hearing Bill of Rights Act



### 20-47-1001. Title.

This subchapter shall be known and may be cited as the "Mental Health Services for Individuals who are Deaf or Hard of Hearing Bill of Rights Act".

**History.** Acts 2019, No. 644, § 1.

### 20-47-1002. Legislative findings.

The General Assembly finds that:

(1) Individuals who are deaf or hard of hearing, as a group, represent an underserved population in many respects, particularly in regard to access to mental health services;

(2) Individuals who are deaf or hard of hearing often require highly specialized mental health services due to communication barriers and other complex needs;

(3) Research shows that individuals who are deaf or hard of hearing are subject to significantly more risks to their mental health than individuals who are able to hear due to many factors, including without limitation lack of:

(A) Communication access, in general, as well as lack of or impaired communication with family members, educators, and treating healthcare professionals; and

(B) Access to:

(i) Appropriate educational services; and

(ii) Culturally affirmative and linguistically appropriate physical and mental health services;

(4)(A) Some individuals who are deaf or hard of hearing may have secondary disabilities that impact the type and manner of mental health services that are needed.

(B) Individuals who are deaf and blind often have diverse ways of communicating, including without limitation tactile sign language;

(5)(A) Being deaf or hard of hearing affects the most basic human needs, which include the ability to communicate with other human beings.

(B)(i) Many individuals who are deaf or hard of hearing use sign language, which may be their primary communication method, while other individuals who are deaf or hard of hearing receive language orally and aurally, with or without visual signs or cues.

(ii) However, other individuals who are deaf or hard of hearing lack any significant language skills or suffer from language deprivation, or both;

(6)(A) Individuals who are deaf or hard of hearing have highly diverse communication skills and challenges.

(B) The nature and timing of a hearing loss, the helpfulness of medical or therapeutic remediation efforts, and the accessibility of sign language or spoken language at home, school, and other settings shape the way that hearing loss impacts individuals who are deaf or hard of hearing.

(C)(i) Depending on the circumstances of an individual's hearing loss, his or her innate abilities, and the degree to which he or she has been supported in language acquisition, individuals who are deaf or hard of hearing can range in their communication ability from being multilingual, with fluency in more than one (1) communication method, to being alingual, with fluency in no communication method.

(ii) However, poorly developed language skills in both sign language and spoken language are common;

(7) It is essential that individuals who are deaf or hard of hearing:

(A) Have access to appropriate mental health services that are provided:

(i) In the primary communication method of the individual, as determined by the preference of the individual who is deaf or hard of hearing or by an appropriate communication assessment, or both; and

(ii) By mental health professionals such as psychiatrists, psychologists, therapists, counselors, social workers, and other personnel who:

*(a)* Are fluent in the primary communication method of the individual who is deaf or hard of hearing;

*(b)* Understand the unique nature of being deaf or hard of hearing; and

*(c)* Possess the knowledge and training to:

*(1)* Work effectively with individuals who are deaf or hard of hearing;

*(2)* Provide culturally affirmative mental health services and linguistically appropriate mental health services to individuals who are deaf or hard of hearing; and

*(3)* Collaborate skillfully with interpreters;

(B) Have access to mental health professionals who are familiar with the unique culture and needs of individuals who are deaf or hard

of hearing since mental health professionals may misdiagnose individuals who are deaf or hard of hearing if the mental health professionals are unaware of the special needs of individuals who are deaf or hard of hearing or lack training in working with individuals who are deaf or hard of hearing;

(C) Are involved in determining the scope, content, and purpose of mental health services tailored for delivery to individuals who are deaf or hard of hearing; and

(D) Have access to:

(i) Mental health services that provide appropriate one-on-one access to a full continuum of mental health services, including without limitation all modes of therapy and evaluation; and

(ii) Specialized mental health services that are recommended as best practice and use appropriate curricula, staff, and outreach to support the unique mental health needs of individuals who are deaf or hard of hearing;

(8) Individuals who are deaf or hard of hearing should have access to a resource guide listing the mental health services in this state that offer the best access and provide the most specialized mental health services for clients; and

(9) Individuals who are deaf or hard of hearing would benefit from the development and implementation of state and regional services to provide for the mental health needs of individuals who are deaf or hard of hearing.

**History.** Acts 2019, No. 644, § 1.

### 20-47-1003. Definitions.

As used in this subchapter:

(1) "Certified mental health professional" means a psychiatrist, psychologist, advanced practice registered nurse, therapist, counselor, or social worker licensed in this state and certified by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services as:

(A) Fluent in one (1) or more primary communication methods;

(B) A specialist who is trained and experienced in working skillfully with interpreters; and

(C) Knowledgeable of the cultural needs of clients;

(2) "Client" means an individual who is deaf or hard of hearing and who is in need of mental health services;

(3) "Communication method" means any of the following systems of communication used by clients:

(A) American Sign Language;

(B) An English-based manual or sign system;

(C) A highly visually oriented and minimal sign language system to communicate, including without limitation a home-sign-based system, idiosyncratic signs, a sign system or language of another country, or nonlinguistic or semilinguistic communication systems

designed to meet the needs of language-deprived or dysfluent individuals; or

(D) An oral, aural, or speech-based sign system;

(4) "Culturally affirmative mental health services" means the full continuum of mental health services that are sensitive to, and in support of, the diverse cultural affiliations, including the affiliation with the deaf community and culture, and needs of the client that are delivered by certified mental health professionals and ancillary staff;

(5) "Deaf" means:

(A) The condition of having sustained a hearing loss that is so severe that the individual has difficulty in processing linguistic information through hearing, regardless of amplification or other assistive technology; and

(B) The unique culture, community, and identity of an individual who is deaf that has a set of beliefs, values, and traditions;

(6) "English-based manual or sign system" means a sign system that uses manual signs in English word order, sometimes with added affixes that are not present in American Sign Language;

(7) "Fluent" means a score of "Advanced" or higher for certified mental health professionals and "Intermediate Plus" for other licensed and nonlicensed ancillary staff qualified to work in a mental health setting on a sign language communication skills assessment, including without limitation the Sign Language Proficiency Interview assessment and other communication skills assessments;

(8) "Hard of hearing" means the condition of having sustained a hearing loss, whether permanent or fluctuating, that may be corrected by amplification or other hearing assistive technology, but yet presents challenges in processing linguistic information through hearing;

(9) "Interpreter" means a licensed qualified interpreter or a licensed provisional interpreter as defined under § 20-14-802;

(10) "Linguistically appropriate mental health services" means the full continuum of mental health services that are made available in the communication method preferred by the client or in the communication method that is determined to be most effective by a communication assessment;

(11) "Oral, aural, or speech-based system" means a communication system that uses the speech or residual hearing, or both, of an individual who is deaf or hard of hearing, regardless of technology or cued assistance; and

(12) "Primary communication method" means the communication method preferred by the individual who is deaf or hard of hearing that will be most effective, as determined by the preference of the individual who is deaf or hard of hearing or by an appropriate communication assessment, or both.

**History.** Acts 2019, No. 644, § 1.

**20-47-1004. Discrimination.**

(a) A certified mental health professional shall:

(1) Offer culturally affirmative mental health services and linguistically appropriate mental health services to a client in the client's primary communication method; and

(2) Not deny access to culturally affirmative mental health services and linguistically appropriate mental health services to a client in the client's primary communication method to a client due to the client's having:

(A) Residual hearing ability, whether or not supported by amplification or other hearing assistive technology; or

(B) Previous experience with some other communication method.

(b) This section does not:

(1) Prevent a client from receiving mental health services in more than one (1) communication method; or

(2) Require a client to receive culturally affirmative mental health services and linguistically appropriate mental health services.

**History.** Acts 2019, No. 644, § 1.

**20-47-1005. Statewide mental health services.**

The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall:

(1) Implement and maintain culturally affirmative mental health services and linguistically appropriate mental health services for any client in his or her primary communication method;

(2) Recruit, develop, and maintain an adequate number of certified mental health professionals and other licensed and nonlicensed ancillary staff qualified to work in settings where mental health services are provided to clients to ensure the delivery of culturally affirmative mental health services and linguistically appropriate mental health services one-on-one to any client in his or her primary communication method;

(3) Monitor all culturally affirmative mental health services and linguistically appropriate mental health services to ensure that clients of all ages are adequately served;

(4) Provide adequate supplemental funding to all culturally affirmative mental health services and linguistically appropriate mental health services and incentives for certified mental health professionals;

(5) Establish a certification process for mental health professionals who meet all standards and guidelines, as determined by the division, to provide culturally affirmative mental health services and linguistically appropriate mental health services to clients; and

(6) Develop and implement strategies for ensuring access to culturally affirmative mental health services and linguistically appropriate mental health services by clients in geographic areas where there is a lack or shortage of certified mental health professionals, including without limitation the authorization of treatment:

(A) In a different location by certified mental health professionals; or

(B) Through telemedicine or other remote technology that allows a client to be provided culturally affirmative mental health services and linguistically appropriate mental health services from certified mental health professionals.

**History.** Acts 2019, No. 644, § 1.

**20-47-1006. Deaf Services Coordinator — Advisory committee.**

(a) In order to provide culturally affirmative mental health services and linguistically appropriate mental health services to clients, the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall employ a Deaf Services Coordinator to coordinate and oversee the implementation of these mental health services statewide.

(b) The coordinator shall:

(1) Be competent and have extensive experience in providing mental health services to clients;

(2) Be fluent in American Sign Language and possess a thorough understanding of the deaf community and culture;

(3) Have at least three (3) years of experience providing one-on-one services to clients;

(4) Possess:

(A) A master's degree or higher in a behavioral health or clinical field; and

(B) The skill, knowledge, and experience in adapting and developing policies and procedures based on the actual service needs of individuals who are deaf or hard of hearing; and

(5) Know and understand applicable state laws and rules and federal laws and regulations.

(c) The coordinator shall:

(1) Ensure that:

(A) Culturally affirmative mental health services and linguistically appropriate mental health services are accessible statewide; and

(B) The provision of appropriate consultation, training, and technical assistance is accessible to mental health professionals in various settings, including without limitation inpatient, outpatient, and residential programs;

(2) Serve as a professional liaison to other state agencies or boards for the collaboration needed to maximize the use of in-state resources and joint planning;

(3) Develop a model for a statewide system of care for culturally affirmative mental health services and linguistically appropriate mental health services for clients that includes without limitation:

(A) Standards of care for individuals who are deaf or hard of hearing, including standards for American Sign Language fluency required in providing care in mental health settings;

(B) Guidelines to measure the proficiency of a mental health professional in any communication method; and

(C) A partnership with the Advisory Board for Interpreters between Hearing Individuals and Individuals who are Deaf, Deafblind, Hard of Hearing, or Oral Deaf;

(4) Collaborate with state and private mental health professionals throughout the state to assist and ensure compliance with federal and state laws relating to mental health services for clients;

(5) Collect and evaluate clinical and programmatic outcome data from mental health professionals serving individuals who are deaf or hard of hearing;

(6) Distribute funds or grants to public and private mental health professionals to achieve optimum service delivery within the system of care; and

(7) Provide:

(A) Reports as requested by the Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services; and

(B) Clinical and administrative case consultation to mental health professionals when appropriate regarding culturally affirmative mental health services and linguistically appropriate mental health services to clients.

(d)(1) The coordinator shall establish an advisory committee to make recommendations and provide advice and assistance concerning the implementation of this subchapter.

(2)(A) The advisory committee shall consist of ten (10) individuals appointed by the Secretary of the Department of Human Services.

(B) The advisory committee shall consist of:

(i) Individuals who are deaf or hard of hearing;

(ii) Parents or legal guardians of individuals who are deaf or hard of hearing;

(iii) Certified mental health professionals;

(iv) Interpreters; and

(v) Educators who are licensed in this state to teach individuals who are deaf or hard of hearing.

(C) At least fifty-one percent (51%) of the advisory committee shall be individuals who are deaf or hard of hearing.

(D) The members shall serve a two-year term and may be reappointed.

(3)(A) The coordinator shall call the first meeting within thirty (30) days of establishing the advisory committee.

(B) The advisory committee shall meet at least quarterly after the first meeting is held.

(4)(A) Members of the advisory committee are voluntary and shall not receive compensation, wages, or salary due to membership on the advisory committee.

(B)(i) Members of the advisory committee may receive reimbursement for travel and other expenses under § 25-16-902 with the approval of the coordinator.

(ii) However, the coordinator shall use technology and other available resources to avoid excessive and unnecessary costs related to member reimbursement.

**History.** Acts 2019, No. 644, § 1.

### 20-47-1007. Basic standards of care for mental health services for individuals who are deaf or hard of hearing.

(a) A client who is admitted for mental health treatment shall have access to culturally affirmative mental health services and linguistically appropriate mental health services.

(b)(1) A mental health professional shall work with the Deaf Services Coordinator as appropriate to ensure that culturally affirmative mental health services and linguistically appropriate mental health services are made accessible to clients.

(2) A client shall have access to one-on-one culturally affirmative mental health services and linguistically appropriate mental health services from a certified mental health professional who is fluent in the communication method that is preferred by the client or recommended by a communication assessment, or both.

(3) If one-on-one culturally affirmative mental health services and linguistically appropriate mental health services by a certified mental health professional are not available within a reasonable geographical area, as determined by the coordinator, for a client, the client shall be offered:

(A) An appropriate referral to a certified mental health professional who can provide culturally affirmative mental health services and linguistically appropriate mental health services through telemedicine or other remote technology; or

(B)(i) At no cost to the client, culturally affirmative mental health services and linguistically appropriate mental health services through the use of an interpreter.

(ii) If an interpreter cannot be physically present in a timely manner, the services of an interpreter may be offered to the client through telemedicine or other remote technology.

(4) If an interpreter is offered to a client, the client:

(A) May voluntarily decline to accept or use the mental health services through the interpreter without a penalty to the client; and

(B) Shall be offered any other assistance and services as required by federal and state law, including without limitation a different interpreter or hearing assistive technology.

(5) If a client refuses all culturally affirmative mental health services and linguistically appropriate mental health services that are offered, the mental health professional shall:

(A) Secure from the client a signed waiver of the right to receive culturally affirmative mental health services and linguistically appropriate mental health services and place the waiver in the file of the client;

(B) Notify the coordinator of the refusal of culturally affirmative mental health services and linguistically appropriate mental health services; and

(C) Allow the coordinator to review the culturally affirmative mental health services and linguistically appropriate mental health services offered to ensure that all the mental health services were appropriate.

**History.** Acts 2019, No. 644, § 1.

# CHAPTER 48

# TREATMENT OF PERSONS WITH DEVELOPMENTAL DISABILITIES

SUBCHAPTER.



## Subchapter 1 — General Provisions

SECTION.



### 20-48-101. Definitions.

As used in this chapter:

(1)(A) "Accredited nonprofit entity" means a nonprofit entity that:

(i) Has successfully completed an ongoing accreditation process that is related to the delivery of services to adults with developmental disabilities and is offered by a national accrediting organization;

(ii) Satisfies the appropriate licensure criteria established by the Division of Developmental Disabilities Services; and

(iii) Is positioned to provide nonresidential services to adults with developmental disabilities upon licensure by the division when no existing nonprofit community program is interested in providing the specific category of nonresidential services to adults with develop-

mental disabilities that have been identified by the division as underserved.

(B) As used in subdivision (1)(A)(i) of this section, "national accrediting organization" includes without limitation:

(i) The CARF International; or

(ii) Any other similar national accrediting organization recognized by the division;

(2) "Existing operations" means the provision by a qualified community provider of one (1) or more of the following services without regard to order:

(A) A licensed early intervention day treatment program or adult developmental day treatment program;

(B) A licensed developmental disability services group home in operation and recognized by the division on or before July 1, 1995;

(C) An intermediate care facility for individuals with intellectual disabilities that has fifteen (15) beds or fewer; or

(D) An apartment complex in operation and serving individuals with developmental disabilities on or before January 1, 2008;

(3) "Human development center" means an institution maintained for the care and training of persons with developmental disabilities;

(4) "Intellectual and developmental disability" means a disability of a person that:

(A)(i) Is attributable to an impairment of general intellectual functioning or adaptive behavior, including cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism;

(ii) Is attributable to any other condition of a person found to be closely related to intellectual and developmental disability because the condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual and developmental disability or requires treatment and services similar to that required for a person with an intellectual and developmental disability; or

(iii) Is attributable to dyslexia resulting from a disability described in subdivision (4)(A)(i) or subdivision (4)(A)(ii) of this section;

(B) Originates before the person attains twenty-two (22) years of age;

(C) Has continued or can be expected to continue indefinitely; and

(D) Constitutes a substantial impairment to the person's ability to function without appropriate support services, including, but not limited to, planned recreational activities, medical services such as physical therapy and speech therapy, and sheltered employment or job training;

(5)(A) "Nonprofit community program" means a program that provides only nonresidential services to persons with developmental disabilities or provides nonresidential and residential services to persons with developmental disabilities and is licensed by the division.

(B) A nonprofit community program serves as a quasi-governmental instrumentality of the state by providing support and services to

persons who have a developmental disability or delay and would otherwise require support and services through state-operated programs and facilities; and

(6)(A) "Qualified nonprofit community program" means a nonprofit community program that holds a valid nonprofit community program license issued by the division.

(B) "Qualified nonprofit community program" includes:

(i) A nonprofit community program that holds a license that was issued by the division on or before February 1, 2007; and

(ii) An accredited nonprofit entity that is awarded a license as a nonprofit community program by the division after February 1, 2007.

**History.** Acts 1981, No. 513, § 1; A.S.A. 1947, § 59-1018; Acts 1993, No. 729, § 1; 2007, No. 645, § 1; 2011, No. 68, § 2; 2013, No. 1017, § 2; 2019, No. 1035, § 17.

**Amendments.** The 2019 amendment rewrote (2) and (3) [now (4) and (2)].

## 20-48-104. Intermediate Care Facilities for Individuals with Intellectual Disabilities program — Administration.

(a) The operation of the community-based Intermediate Care Facilities for Individuals with Intellectual Disabilities program will be subject to the oversight of a five-member committee composed of three (3) members of the House of Representatives to be appointed by the Speaker of the House of Representatives and two (2) members of the Senate to be appointed by the President Pro Tempore of the Senate.

(b) The committee shall provide oversight for the operation of the program and make recommendations, within the appropriate federal regulations and guidelines, to the Division of Developmental Disabilities Services and the Office of Long-Term Care to establish and clarify the mission, goals, levels of services, and scope of the program and to provide consistency in state rules, guidelines, standards, and policies.

(c) The committee shall also make recommendations for adequate funding to ensure the fiscal integrity of the program to allow it to be operated pursuant to the state rules and federal regulations, guidelines, standards, and policies.

**History.** Acts 1991, No. 922, § 20; 1991, No. 1129, § 26; 2019, No. 315, § 2148; 2019, No. 389, § 58; 2019, No. 1035, § 18.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b); and inserted "rules" in (c).

The 2019 amendment by No. 389 substituted "Individuals with Intellectual Disabilities" for "Mentally Retarded" in the section heading; and substituted "Individuals with Intellectual Disabilities program is" for "Mentally Retarded program will be" in (a).

The 2019 amendment by No. 1035 inserted "and Developmental" in the section heading and (a); substituted "rules" for "regulations" in (b); and inserted "rules" in (c).

## Subchapter 2 — Arkansas Intellectual and Developmental Disabilities Act



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**Effective Dates.** Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

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### 20-48-201. Title.

This subchapter shall be known and may be cited as the "Arkansas Intellectual and Developmental Disabilities Act".

**History.** Acts 1969, No. 265, § 1; A.S.A. 1947, § 59-1001; Acts 2019, No. 1035, § 19.

**Amendments.** The 2019 amendment inserted "and Developmental".

### 20-48-202. Definitions.

As used in this subchapter, unless the context otherwise requires:
(1) "Community" means either region or locality;
(2)(A) "Coordinate" means to utilize resources in appropriate sequence and relationship to provide the proper services for individuals with intellectual and developmental disabilities.

(B) "Coordinate" implies a working relationship with, but not administrative authority over, public agencies providing services to individuals with intellectual and developmental disabilities;

(3) "Individual" means a person without regard to chronological age;

(4)(A) "Individual with intellectual and developmental disabilities" means:

(i) A person with a mental deficit requiring him or her to have special evaluation, treatment, care, education, training, supervision, or control in his or her home or community, or in a state institution for persons with intellectual disabilities; or

(ii) A person with intellectual and developmental disabilities who may not exhibit an intellectual deficit on standard psychological tests but who, because of other handicaps, functions as a person with intellectual disabilities.

(B) "Individual with intellectual and developmental disabilities" does not include a person whose primary condition is caused by mental illness, emotional disturbance, physical handicap, or sensory defect;

(5) "Intellectual and developmental disability" means the same as defined in § 20-48-603;

(6) "Locality" means a geographical area defined by the Division of Developmental Disabilities Services or the appropriate division as determined by the Secretary of the Department of Human Services usually consisting of a municipality or county but not excluding other areas within easy commuting distance;

(7) "Private organizations" means organizations, persons, firms, individuals, corporations, or associations;

(8) "Public agencies" means all agencies, departments, boards, institutions, commissions, officers, officials, political subdivisions and agencies thereof, and school districts of this state;

(9) "Region" means a geographical area defined by the Division of Developmental Disabilities Services, usually consisting of all or parts of two (2) or more counties, which is created to provide services for individuals with intellectual and developmental disabilities when the services cannot be provided feasibly or practically at the local level;

(10) "Services for individuals with intellectual disabilities" or "services" means all services pertaining to and incidental to the prevention, detection, diagnosis, evaluation, treatment, care, custody, education, training, rehabilitation, or supervision of individuals with intellectual disabilities; and

(11) "Superintendent" means the chief administrative officer assigned full-time to a human development center.

**History.** Acts 1969, No. 265, § 2; A.S.A. 1947, § 59-1002; Acts 2019, No. 389, §§ 59, 60; 2019, No. 910, §§ 5205, 5206; 2019, No. 1035, § 19.

**Amendments.** The 2019 amendment by No. 389 repealed former (1), (5), and (6).

The 2019 amendment by No. 910 repealed former (5); and substituted "Secretary of the Department of Human Ser-

vices" for "Director of the Department of Human Services" in former (6).

The 2019 amendment by No. 1035 rewrote the section.

## 20-48-205. Board of Developmental Disabilities Services — Powers and duties.

(a) The Board of Developmental Disabilities Services:

(1) Shall:

(A) Have charge of the properties used for the purposes of the human development centers;

(B) Supervise:

(i) Appointment of employees;

(ii) Performance of duties by employees, including off-premises assignments for educational or training purposes;

(iii) Removal of employees; and

(iv) Fixing of employee compensation; and

(C) Supervise expenditures of the human development centers; and

(2) May:

(A) Accept and hold in trust real, personal, or mixed property received by grant, gift, will, or otherwise;

(B) Purchase land or receive grants or gifts of land and take deeds therefor in the name of the State of Arkansas;

(C) Accept grants or gifts of money from any source whatever and use the money for any of the powers and purposes of the board; and

(D) Take all action and execute all documents necessary or desirable to carry out the powers and purposes of the board.

(b) The board may make rules regarding the care, custody, training, and discipline of individuals with intellectual and developmental disabilities in the human development centers or receiving services for individuals with intellectual and developmental disabilities and respecting the management of the human development centers and the affairs as the board may deem necessary or desirable to the proper performance of the powers and purposes of the board.

(c) The board is prohibited from promulgating any rule that would set the salary of any employee at the local level unless specifically required to do so by the United States Government.

**History.** Acts 1969, No. 265, § 5; 1981, No. 774, § 18; A.S.A. 1947, §§ 59-1005, 59-1005.1; Acts 2019, No. 315, § 2149; 2019, No. 1035, § 20.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b); and deleted "or regulation" following "rule" in (c).

The 2019 amendment by No. 1035 rewrote (a); in (b), substituted "make rules regarding the care" for "make such regulations respecting the care", inserted "and developmental" twice, inserted "human development" twice, substituted "the affairs" for "their affairs", substituted "the board may deem" for "it may deem", and added "of the board"; and deleted "or regulation" following "rule" in (c).

### 20-48-206. Board of Developmental Disabilities Services — Human development centers — Powers and duties — Admission.

(a) With regard to the establishing and operating of the human development centers, the Board of Developmental Disabilities Services, in addition to the authorities, rights, and duties granted by this subchapter, shall continue to have all of its authorities, rights, and duties granted by existing law, which shall include, without limitation, the applicable provisions of § 20-48-401 et seq. and § 20-48-501 et seq., save only those instances where there are express inconsistencies, in which event the provisions of this subchapter shall control.

(b)(1) Admissions to the institutional facilities of the human development centers shall be on the basis of a determination by the board that:

(A) The individual involved has an intellectual and developmental disability;

(B) His or her parent or guardian has resided in the state not less than three (3) years before the date of the filing of the petition for his or her admission, or the individual involved is a dependent and a public charge or ward of the state or a political subdivision thereof;

(C) The welfare of the individual involved requires the special care, training, or education provided by institutional facilities of the human development center; and

(D) The board has adequate funds and institutional facilities available for the care, training, or education of the individual.

(2)(A) The determination of whether an individual has an intellectual and developmental disability shall be made after there has been an investigation that includes an examination by an evaluation team appointed by the board.

(B) The team shall be composed of two (2) or more physicians, psychiatrists, psychologists, or other persons found by the board to be professionally qualified on the basis of training and experience in services for individuals with intellectual and developmental disabilities to make a determination as to whether the individual involved has an intellectual and developmental disability.

**History.** Acts 1969, No. 265, § 11; A.S.A. 1947, § 59-1011; Acts 2019, No. 1035, § 21.

**Amendments.** The 2019 amendment rewrote (b).

### 20-48-207. Board of Developmental Disabilities Services — Contracts for provision of services.

(a) If and to the extent necessary to accomplish the intended purpose of this subchapter to make available the broadest and most effective provision of intellectual and developmental disabilities services to those in need of the services, the Board of Developmental Disabilities Services is authorized to contract for the providing of intellectual and

developmental disabilities services by other public agencies or private organizations.

(b) In this regard, the board may promulgate rules and fix standards necessary to properly ensure that such intellectual and developmental disabilities services are furnished in a proper and reasonable manner and on an economical basis.

**History.** Acts 1969, No. 265, § 10; A.S.A. 1947, § 59-1010; Acts 2019, No. 315, § 2150; 2019, No. 1035, § 22.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b).

The 2019 amendment by No. 1035 substituted "intellectual and developmental disabilities" for "intellectual disabilities" throughout the section; and substituted "may promulgate rules" for "is authorized to promulgate regulations" in (b).

## 20-48-208. Board of Developmental Disabilities Services — License for facilities and institutions required.

(a) The Board of Developmental Disabilities Services shall:

(1) Regulate the providing of intellectual and developmental disabilities services by private organizations and public agencies; and

(2) Promuglate rules covering the issuance, suspension, and revocation of licenses and fixing the standards for construction, reconstruction, maintenance, and operation of institutions and facilities, or parts thereof, operated primarily for the providing of intellectual and developmental disabilities services, unless the facilities or institutions in their entirety are licensed by the Office of Long-Term Care.

(b) A public agency or private organization shall not operate any institution or facility for the provision of intellectual and developmental disabilities services unless the private agency or private organization has a license in effect.

(c) The board shall not deny a license or suspend or revoke a license unless the applicant or licensee has notice and an opportunity for a hearing. The hearing and proceedings incidental thereto shall be governed by the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) By appropriate proceeding in the Pulaski County Circuit Court, the board may enjoin the operation of any organization so long as it is not in compliance with the provisions of this subchapter.

**History.** Acts 1969, No. 265, § 12; 1981, No. 106, § 1; A.S.A. 1947, § 59-1012; Acts 2019, No. 315, § 2151; 2019, No. 1035, § 23.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a).

The 2019 amendment by No. 1035 rewrote (a) and (b).

## 20-48-209. Board of Developmental Disabilities Services — Planning and implementation.

(a)(1) The Board of Developmental Disabilities Services is designated as the single state agency for the purpose of full participation under any federal act requiring the designation of a single state agency

concerning planning, formulation, and implementation of programs, construction and operation of facilities, financing of facilities and programs, or otherwise pertaining to the obtaining and rendition of intellectual and developmental disabilities services.

(2) However, subdivision (a)(1) of this section does not deprive other public agencies of jurisdiction over or the right to plan for and control and operate programs that pertain to intellectual and developmental disabilities services but which fall within the primary jurisdiction of other public agencies such as programs administered by the Arkansas School for the Deaf, the Arkansas School for the Blind, the Career Education and Workforce Development Board, the State Board of Education, the Department of Health, and the Department of Human Services.

(b)(1) The Board of Developmental Disabilities Services may coordinate the planning and implementation of intellectual and developmental disabilities programs and institutional and community activities of all public agencies.

(2) However, subdivision (b)(1) of this section does not deprive other public agencies of jurisdiction over or the right to plan for and control and operate programs that pertain to intellectual and developmental disabilities services but which fall within the primary jurisdiction of other public agencies such as programs administered by the Arkansas School for the Deaf, the Arkansas School for the Blind, the Career Education and Workforce Development Board, the State Board of Education, the Department of Health, and the Department of Human Services.

(c)(1) Effective planning and coordination is essential to the public interest.

(2) In order to achieve this to the fullest extent possible, the Board of Developmental Disabilities Services may establish and promulgate rules fixing standards for intellectual and developmental disabilities programs and activities and evaluate intellectual and developmental disabilities programs and activities of public agencies.

**History.** Acts 1969, No. 265, § 8; A.S.A. 1947, § 59-1008; Acts 2019, No. 315, § 2152; 2019, No. 1035, § 24.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (c).

The 2019 amendment by No. 1035 rewrote the section.

## 20-48-210. Deputy Director of Division of Developmental Disabilities Services.

(a)(1) There is created the office of the Deputy Director of the Division of Developmental Disabilities Services.

(2) The deputy director shall:

(A) Be appointed by the Board of Developmental Disabilities Services in consultation with the Secretary of the Department of Human Services;

(B) Be a person of proven administrative ability and professional qualifications, preferably holding a Ph.D. or equivalent, but including at least a master's degree in psychology, education, social service, or other field of study approved by the board and shall have at least five (5) years' experience in intellectual and developmental disabilities services;

(C) Be the Chair of the Board of Developmental Disabilities Services and shall maintain an official set of minutes of all board action; and

(D) Be the executive officer of the Division of Developmental Disabilities Services and shall operate and manage the division, subject to the control of the board and in consultation with the secretary.

(b) The board may delegate to the deputy director any powers of the board upon such terms and for such duration as the board shall specify.

**History.** Acts 1969, No. 265, § 7; A.S.A. 1947, § 59-1007; Acts 2019, No. 910, § 5207; 2019, No. 1035, § 24.

**Amendments.** The 2019 amendment by No. 910 added "in consultation with the Secretary of the Department of Human Services" in (a) and (d); deleted "and shall serve at the pleasure of" following "appointed by" in (a); and substituted "Chair of the Board of Development Disabilities Services" for "executive secretary of the board" in (c).

The 2019 amendment by No. 1035 rewrote the section.

## 20-48-211. Board of Developmental Disabilities Services — Community centers.

(a)(1) The Board of Developmental Disabilities Services may take the necessary action to establish and maintain, or to cause to be established and maintained, community centers, alone or together with public agencies or private organizations, at localities determined to be appropriate for the better providing of or for assistance in the providing of intellectual and developmental disabilities services in any region or locality of the state.

(2) Community centers may be organized on a formal or informal basis as shall be determined to best suit the circumstances at any particular region or locality, including without limitation organization under the provisions of the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224.

(b)(1) Within the limits of available funds, a program for furnishing intellectual and developmental disabilities services shall be developed for each community center which may include a state grants-in-aid program.

(2) The board may promulgate rules covering the establishment and operation of community centers, the formulation and implementation of intellectual and developmental disabilities programs and activities for community centers, and the funding of the programs and activities.

(c) The board is prohibited from promulgating any rule that would set the salary of any employee of a community-based program unless specifically required to do so by the United States Government.

**History.** Acts 1969, No. 265, § 9; 1983, No. 779, § 19; A.S.A. 1947, §§ 59-1009, 59-1009.1; Acts 2019, No. 315, § 2153; 2019, No. 1035, § 24.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b); and deleted "or regulation" following "rule" in (c).

The 2019 amendment by No. 1035 rewrote (a) and (b); and deleted "or regulation" following "rule" in (c).

## 20-48-212. Amount requested for Special Olympics Arkansas.

(a) The Board of Developmental Disabilities Services, when preparing its biennial budget request for submission to the Governor and the Legislative Council, shall consult with Special Olympics Arkansas concerning the amount which is to be submitted as the request for each year of the forthcoming biennium for a grant to Special Olympics Arkansas.

(b) The amount determined by Special Olympics Arkansas shall be submitted as the board's request to the Governor and to the Legislative Council.

**History.** Acts 1989 (1st Ex. Sess.), No. 246, § 17; 2019, No. 1035, § 24.

**Amendments.** The 2019 amendment substituted "Special Olympics Arkansas" for "Arkansas Special Olympics" in the section heading; added the subsection designations; and, in (b), deleted "as may be" preceding "determined" and substituted "board's" for "Division of Developmental Disabilities".

### Subchapter 3 — Cooperative Agreements

SECTION.



## 20-48-301. Purpose.

The purpose of this subchapter is to permit the Board of Developmental Disabilities Services to cooperate with public agencies or private nonprofit organizations of adjoining states to provide services for residents of Arkansas with intellectual and other developmental disabilities.

**History.** Acts 1973, No. 465, § 1; A.S.A. 1947, § 59-1013; Acts 2019, No. 1035, § 25.

**Amendments.** The 2019 amendment deleted "a division of the Department of Human Services" preceding "to cooperate"; substituted "with intellectual and other developmental disabilities" for "who are intellectually disabled or developmentally disabled"; and made stylistic changes.

## 20-48-302. Authority to participate.

(a) Subject to the conditions and limitations contained in this subchapter, the Board of Developmental Disabilities Services may enter into agreements with public agencies, private nonprofit organizations, or combinations thereof from adjoining states for the purpose of

performing its responsibility to the residents of Arkansas with intellectual and other developmental disabilities.

(b) The agreements may include financial participation, using any funds that are at its disposal, to the extent that similar services would be performed within the state.

**History.** Acts 1973, No. 465, § 2; A.S.A. 1947, § 59-1014; Acts 2019, No. 1035, § 26.

**Amendments.** The 2019 amendment substituted "with intellectual and other developmental disabilities" for "who are intellectually disabled or developmentally disabled" in (a).

## Subchapter 4 — Human Development Centers Generally



### 20-48-401. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) [Repealed.]

(2) "Center" means a human development center; and

(3) "Superintendent" means the superintendent of a human development center.

**History.** Acts 1955, No. 6, § 1; A.S.A. 1947, § 59-1101; Acts 2019, No. 389, § 61.

**Amendments.** The 2019 amendment repealed (1).

### 20-48-403. Human development centers — Creation.

(a) There are created and there shall be maintained institutions for the care, custody, treatment, and training of individuals with intellectual and other developmental disabilities to be known as "human development centers".

(b) For the purposes of the institutions, the Board of Developmental Disabilities Services is charged with the care and training of individuals with intellectual and other developmental disabilities.

**History.** Acts 1955, No. 6, § 2; A.S.A. 1947, § 59-1102; Acts 2019, No. 1035, § 27.

**Amendments.** The 2019 amendment substituted "individuals with intellectual and other developmental disabilities" for "developmentally disabled individuals" in (a) and (b).

### 20-48-404. Eligibility for admission.

An individual may be deemed eligible for admission to a human development center if, due to intellectual or other developmental disability, the individual is incapable of managing his or her affairs and the individual's welfare requires the special care, training, and treatment provided at a human development center.

**History.** Acts 1955, No. 6, § 3; A.S.A. 1947, § 59-1103; Acts 1999, No. 1437, § 1; 2019, No. 389, § 62; 2019, No. 1035, § 27.

**Amendments.** The 2019 amendment by No. 389, in (1), substituted "individual" for "person" and substituted "individual's" for "person's"; and deleted former (2).

The 2019 amendment by No. 1035 rewrote the section.

### 20-48-405. Petition for admission.

(a) A parent or guardian of an individual with intellectual and developmental disabilities may file with the Board of Developmental Disabilities Services a verified petition requesting that the individual be admitted to the human development center.

(b) The petition shall include:

(1) The relation of the individual to the petitioner;

(2) The name, age, sex, and residence of the individual;

(3) A statement of the mental and physical condition of the individual;

(4) Whether the individual has any property or means of support;

(5) The name of the person having custody of the individual;

(6) The place where and length of time the individual has resided in the state; and

(7) A statement as to whether the petitioner desires that the individual be admitted voluntarily or by commitment.

(c) In the event the estate of the individual or his or her parents, relative, or guardian is unable to pay for the maintenance, training, and education, the petition shall state this fact.

**History.** Acts 1955, No. 6, § 4; 1957, No. 349, § 1; A.S.A. 1947, § 59-1104; Acts 2019, No. 1035, § 28.

**Amendments.** The 2019 amendment substituted "individual with intellectual and developmental disabilities" for "intellectually disabled individual" in (a).

### 20-48-406. Admission procedures.

(a)(1) Upon receipt of the petition under § 20-48-405, the Board of Developmental Disabilities Services shall make a determination as to whether or not a human development center then has adequate facilities and funds to properly care for, treat, and train the individual. If the board determines that no center currently has adequate facilities and funds, then the individual shall not be admitted to a center. If the board determines that the centers do have adequate facilities and funds to care for, treat, and train the individual and that the proposed

admission would not crowd the centers beyond their maximum capacity, it shall cause an investigation to be made on the petition.

(2)(A) The investigation shall include an examination of the individual through the use of standard mental and psychological tests and physical examinations by two (2) reputable physicians appointed or designated by the board for the purpose of determining the mental status and condition of the individual and whether or not the individual has or is a carrier of a contagious or infectious disease.

(B) The investigation may also include one (1) or more examinations of the individual by psychologists, psychiatrists, and physicians designated by the board.

(C) The board may proceed toward admission of the individual to the center in accordance with the provisions of subsection (b) or subsection (c) of this section, whichever the board may deem proper in the particular case, but taking into consideration the request contained in the petition if the board determines from the investigation that:

(i) The statements made in the petition are true and correct;

(ii) The individual is eligible under the provisions of § 20-48-404;

(iii) The individual neither has nor is a carrier of a contagious or infectious disease; and

(iv) The individual is not suffering from psychosis of such nature and extent that a center could not properly and beneficially care for, treat, and train the individual with the facilities and program it then has.

(b) The board may permit the voluntary admission of the individual to a center for such period of time as the board may deem necessary for the proper care, training, and education of the individual. The admission shall be by action of the board without the necessity of any court procedure.

(c)(1) The board may determine that the individual should be admitted to a center by legal commitment only. In that event, the board shall file the petition for admission with the circuit court of the county in which the individual resides. There shall be filed with the court, along with the petition, such of the reports received by the board in the course of its investigation and examination as the board may deem necessary.

(2) The court shall promptly set a time and place for a hearing on the petition.

(3) The court may appoint one (1) or two (2) reputable physicians to examine the individual and report to the court the mental status of the individual and whether he or she is afflicted with or a carrier of a contagious or infectious disease, or it may adopt the report of the physician appointed by the board in the investigation of the individual as provided for in subsection (a) of this section.

(4) Upon the hearing on the petition, the court shall determine whether or not the individual should be committed to a center for care, treatment, and training and shall enter an appropriate order in accordance with its determination.

**History.** Acts 1955, No. 6, § 5; 1957, No. 349, § 2; A.S.A. 1947, § 59-1105; Acts 1997, No. 208, § 22; 2003, No. 1473, § 42; 2019, No. 389, § 63.

**Amendments.** The 2019 amendment, in (a)(2)(A), inserted "through the use of standard mental and psychological tests and physical examinations", and substituted "the individual" for "he or she".

## 20-48-413. Emotionally disturbed individuals with co-occurring intellectual disabilities and behavioral health disabling conditions.

(a) The Board of Developmental Disabilities Services may establish and operate an appropriate facility at such location in the state as it shall determine for the care and treatment of individuals with co-occurring intellectual disabilities and behavioral health disabling conditions, and individuals with disorganized behavior, including hyperkinetic, hyperactive, or aggressive behaviors who function as individuals with co-occurring intellectual disabilities and behavioral health disabling conditions.

(b) The board may make rules regarding eligibility for admission to the facility, care and treatment of the individuals, discharge from and return to the facility, charges for the maintenance, care, and training of individuals admitted to the facility, and such other matters as the board shall deem necessary to carry out the most effective program for the care and treatment of individuals with co-occurring intellectual disabilities and behavioral health disabling conditions of this state.

**History.** Acts 1969, No. 72, §§ 1, 2; A.S.A. 1947, §§ 59-1132, 59-1133; Acts 2019, No. 315, § 2154; 2019, No. 389, § 64; 2019, No. 1035, § 29.

**A.C.R.C. Notes.** Acts 2019, No. 389, § 88, provided: "CONSTRUCTION AND LEGISLATIVE INTENT. It is the intent of the General Assembly that:

"(1) The enactment and adoption of this act shall not expressly or impliedly repeal an act passed during the regular session of the Ninety-Second General Assembly;

"(2) To the extent that a conflict exists between an act of the regular session of the Ninety-Second General Assembly and this act:

"(A) The act of the regular session of the Ninety-Second General Assembly shall be treated as a subsequent act passed by the General Assembly for the purposes of:

"(i) Giving the act of the regular session of the Ninety-Second General Assembly its full force and effect; and

"(ii) Amending or repealing the appropriate parts of the Arkansas Code of 1987; and

"(B) Section 1-2-107 shall not apply; and

"(3) This act shall make only technical, not substantive, changes to the Arkansas Code of 1987."

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b).

The 2019 amendment by No. 389 rewrote (a); and, in (b), substituted "may make" for "is authorized to make" and substituted "individuals with mental illness and developmental disabilities" for "emotionally disturbed mentally retarded individuals".

The 2019 amendment by No. 1035, in the section heading, inserted "co-occurring" and added "and behavioral health disabling conditions"; substituted "individuals with co-occurring intellectual disabilities and behavioral health disabling conditions" for "emotionally disturbed intellectually disabled individuals" and similar language throughout the section; in (a), substituted "may establish" for "is authorized to establish", and deleted "because of their problem" following "aggressive behaviors"; and substituted "may make rules" for "is authorized to make such rules and regulations" in (b).

**20-48-415. Board of Developmental Disabilities Services — Powers and duties — Proceedings — Appointment of superintendents.**

(a) The government and control of the human development centers shall be vested in the Board of Developmental Disabilities Services.

(b) The board:

(1) Shall have charge of the property of the state which may be used for the purposes of the centers;

(2) Shall make and execute its bylaws;

(3) Shall appoint and remove its officers, attendants, and employees and fix their compensation;

(4) Shall exercise a strict supervision of the centers' expenditures; and

(5)(A) May acquire real and personal property by purchase, gift, or other transfer, and may own, sell, and transfer real and personal property and establish trusts.

(B)(i) Ownership of real and personal property under the control of the board shall be in the name of the State of Arkansas, or in the trust or trusts as the board may from time to time create.

(ii) All property under the control of the board, whether owned by the State of Arkansas or in a trust established by the board, shall be held for the benefit of individuals with developmental disabilities.

(c)(1) The board shall appoint superintendents who shall not be one of its number. The superintendents shall be reputable, trained administrators of institutions engaged in the care, custody, treatment, and training of children and youth, with at least five (5) years' experience as the superintendent or administrative assistant of such an institution.

(2) The board shall fix the superintendents' salaries and prescribe their duties.

(d)(1) The board shall annually elect from its membership a chair and vice chair, each of whom shall hold office until his or her successor is chosen.

(2) The chair shall preside at meetings of the board, and in his or her absence the vice chair shall preside.

(3) A superintendent shall serve as executive secretary to the board and shall maintain an official set of minutes of all votes and actions of the board. These minutes shall be signed by the superintendent as executive secretary and by the chair of the board.

(4) The board is authorized to designate the superintendent, or some other competent employee or official of the center, to serve as disbursing officer of all funds of the center.

(e) The board shall meet at least one (1) time each three (3) months and at such other times as the chair may deem advisable.

(f) The superintendent of each center shall annually, or more often if required, present to the board for himself or herself and his or her staff a written report of the management of the center setting forth in detail all receipts and disbursements and general conditions of the affairs of the center.

(g) The board shall report biennially to the Governor and General Assembly, accompanying its report with the annual report of the superintendent.

(h) A majority vote of the entire membership of the board shall be necessary to take any board action.

(i) The board may make such rules respecting the care, custody, training, and discipline of individuals admitted to the centers and the management thereof and of its affairs as it may deem for the best interest of the centers and the State of Arkansas.

**History.** Acts 1955, No. 6, §§ 13, 14; A.S.A. 1947, §§ 59-1113, 59-1114; Acts 2005, No. 662, §§ 1, 2; 2019, No. 315, § 2155; 2019, No. 389, § 65.

**Amendments.** The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (i).

The 2019 amendment by No. 389 substituted "individuals" for "persons" in (b)(5)(B)(ii).

## 20-48-416. Designation as state entity for carrying out federal acts.

(a) The Board of Developmental Disabilities Services is designated as the single state entity for carrying out any federal act or law pertaining to individuals with intellectual disabilities and other forms of developmental disabilities.

(b) The board may take all action of every nature whatever necessary or desirable in complying with the requirements of any federal act or law and accomplishing the purposes thereof, including without limitation:

(1) The receiving, handling, and disbursing of grants and funds appropriated by any federal act or law;

(2) The making of provisions to assure full consideration of all aspects of services essential to planning for comprehensive state and community action to combat the effects of intellectual and developmental disabilities and provide services for individuals with intellectual and developmental disabilities, including services in the fields of education, employment, rehabilitation, habilitation, welfare, health, and the law, and services provided through community programs for and institutions for individuals with intellectual and developmental disabilities;

(3) The preparing and submitting of plans for expenditure of such grants and funds and providing the assurance required by any federal act or law as to carrying out the purposes of any federal act or law;

(4) The preparing and submitting of reports of the activities of human developmental centers in carrying out the purposes of any federal act or law in such form and containing such information as may be required by any federal act or law and keeping records and affording access to the records in order to assure correctness and verification of such reports as may be required by any federal act or law;

(5) The providing for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for grants and funds paid to the human development

centers in accordance with the requirements of any federal act or law; and

(6) The doing of all things and taking of all action to carry out any plans for expenditures of the grants and funds in accordance with and for the accomplishment of the purposes of any federal act or law.

(c)(1) This section shall be liberally construed.

(2) The enumeration of any object, purpose, power, manner, method, and thing does not exclude like or similar objects, purposes, powers, manners, methods, or things.

(3) This section is supplementary to any existing purposes and powers authorized to be accomplished by the human development centers or the board.

**History.** Acts 1963, No. 277, §§ 1-3; A.S.A. 1947, §§ 59-1127 — 59-1129; Acts 2019, No. 1035, § 30.

**Amendments.** The 2019 amendment rewrote the section.

**20-48-417. Property and personal effects of residents.**

(a)(1) Within thirty (30) days after the death of a resident, a human development center shall provide an accounting and distribute all funds held in trust and all other property to:

(A) The resident's personal representative, if a personal representative has been appointed by a court at the time that the human development center disburses the funds and distributes any other property;

(B) If a personal representative has not been appointed by a court, the resident's spouse; or

(C) If the resident did not have a spouse and a personal representative has not been appointed by the court, the beneficiary named in the beneficiary designation form provided to the human development center by the resident.

(2) A licensee, owner, administrator, or representative of a human development center shall not be named as a beneficiary on a beneficiary designation form.

(3) The resident, or the resident's court-appointed guardian, shall complete the beneficiary designation form at the time of admission to a human development center in the presence of two (2) witnesses who shall sign the form.

(b)(1) If the resident does not have a court-appointed personal representative or a spouse or if the named beneficiary cannot be located, the funds held in trust shall be placed in an account in a bank, savings and loan association, trust company, or credit union located in this state and, if possible, within the same county as the human development center.

(2) The funds shall not be represented as part of the assets of the human development center on a financial statement.

(3) The human development center shall maintain:

(A) One (1) account for each resident in which are placed all funds held in trust for that resident;

(B) Adequate records to permit compilation of the amount due to each deceased resident's account; and

(C) The resident's account until the funds are disbursed under the probate law, § 28-1-101 et seq.

(c) If the resident does not have a court-appointed personal representative or a spouse or if the named beneficiary cannot be located, all other property held shall be disbursed to the closest relatives of the resident as determined under § 28-9-214.

(d)(1) If any intangible property is not disbursed under this section within one (1) year after the property becomes distributable, the human development center shall escheat the property to the Auditor of State in accordance with § 18-28-201 et seq.

(2) If any tangible property is not disbursed under this section within one (1) year after the property becomes distributable, the human development center shall escheat the property to the Division of Developmental Disabilities Services.

(e) The funds and all other property of the deceased resident shall be kept separate from the funds and other property of:

(1) The human development center; and

(2) Other residents of the human development center.

**History.** Acts 2019, No. 460, § 1.

## Subchapter 6 — Location Act for Community Homes for Individuals with Intellectual and Developmental Disabilities



### 20-48-601. Title.

This subchapter shall be known as the "Location Act for Community Homes for Individuals with Intellectual and Developmental Disabilities".

**History.** Acts 1987, No. 611, § 1; 2019, No. 1035, § 31.

**Amendments.** The 2019 amendment substituted "Individuals with Intellectual and Developmental Disabilities" for "Developmentally Disabled Persons".

### 20-48-602. Purpose.

(a) The General Assembly declares that it is the goal of this subchapter to improve the quality of life of all individuals with intellectual or other developmental disabilities and to integrate individuals with intellectual or other developmental disabilities into the mainstream of society by ensuring them the availability of community residential opportunities in the residential areas of this state.

(b) In order to implement this goal, this subchapter should be liberally construed toward that end.

**History.** Acts 1987, No. 611, § 2; 2019, No. 1035, § 31.

**Amendments.** The 2019 amendment added the subsection designations; and substituted "individuals with intellectual or other developmental disabilities" for "developmentally disabled persons" twice in (a).

## 20-48-603. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Individual with an intellectual and developmental disability" means a person with an intellectual and developmental disability as defined in this section;

(2)(A) "Intellectual and developmental disability" means a disability of a person that:

(i) Is attributable to an impairment of general intellectual functioning or adaptive behavior, including cerebral palsy, spina bifida, Down syndrome, epilepsy, or autism;

(ii) Is attributable to any other condition of a person found to be closely related to intellectual and developmental disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with intellectual and developmental disabilities or requires treatment and services similar to those required for the persons;

(iii) Is attributable to dyslexia resulting from intellectual and developmental disability, cerebral palsy, epilepsy, or autism; and

(iv) Has continued or can be expected to continue indefinitely.

(B) "Intellectual and developmental disability" does not refer to other forms of mental disease or defect not defined in this section;

(3) "Division" means the Division of Developmental Disabilities Services or the staff of the division where the context so indicates;

(4) "Family Home I" means a community-based residential home licensed by the division that provides room and board, personal care, habilitation services, and supervision in a single-family environment for not more than eight (8) individuals with developmental disabilities;

(5) "Family Home II" means a community-based residential home licensed by the division that provides room and board, personal care, habilitation services, and supervision in a multifamily environment for more than eight (8) but fewer than sixteen (16) individuals with developmental disabilities;

(6) "Permitted use" means a use by right that is authorized in residential zoning districts; and

(7) "Political subdivision" means a county or municipal corporation and includes any boards, commissions, or councils governing land use on behalf of the political subdivision.

**History.** Acts 1987, No. 611, § 3; 2011, No. 68, § 3; 2013, No. 1132, § 35; 2019, No. 1035, § 32.

**Amendments.** The 2019 amendment rewrote (1) and (2).

**20-48-605. Issuance and renewal of licenses.**

(a) For the purposes of safeguarding the health and safety of individuals with intellectual or other developmental disabilities and avoiding over-concentration of Family Homes I and Family Homes II, either alone or in conjunction with similar community-based residences, the Division of Developmental Disabilities Services shall inspect and license the operation of family homes and may renew or revoke their licenses.

(b) A license is valid for one (1) year from the date it is issued or renewed although the division may inspect the homes more frequently, if needed.

(c) The division shall not issue or renew and may revoke the license of a family home not operating in compliance with this section and rules adopted hereunder.

**History.** Acts 1987, No. 611, § 5; 2019, No. 315, § 2156; 2019, No. 1035, § 33.

**Amendments.** The 2019 amendment by No. 315 substituted "rules" for "regulations" in (c).

The 2019 amendment by No. 1035 substituted "individuals with intellectual or other developmental disabilities" for "developmentally disabled persons" in (a).

**20-48-606. Rules — Density control.**

(a) The Division of Developmental Disabilities Services shall promulgate rules pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., which shall encompass the following matters:

(1)(A) Limits on the number of new Family Homes I and Family Homes II to be permitted on blocks, block faces, and other appropriate geographic areas taking into account the existing residential population density and the number, occupancy, and location of similar community residential facilities serving persons in drug, alcohol, juvenile, child, parole, and other treatment programs as well as any other dissimilar facilities such as public housing, soup kitchens at churches, and boarding homes.

(B) Density limits as follows:

| City Population | Total Number of Homes I and II |
|---|---|
| 1,000 or fewer | 1 |
| 1,001 — 9,999 | 1 for every 2,000 |
| 10,000 — 49,000 | 1 for every 3,000 |
| 50,000 — 249,000 | 1 for every 10,000 |
| 250,000 — | 1 for every 20,000 |

(C) There shall be three hundred feet (300') between family homes unless otherwise permitted by local ordinance. There shall be three thousand feet (3,000') between family homes in cities over thirty thousand (30,000) population unless otherwise permitted by local ordinance;

(2) Assurance that adequate arrangements are made for the residents of family homes to receive such care and habilitation as are

necessary and appropriate to their needs and to further their progress towards independent living and that they have access to appropriate services such as public transportation, health care, recreation facilities, and shopping centers;

(3) Protection of the health and safety of the residents of Family Homes I and Family Homes II, however, compliance with these rules shall not relieve the owner or operator of any Family Home I or Family Home II of the obligation to comply with the requirements or standards of a political subdivision pertaining to setback, lot size, flood zones, outside appearance, building, housing, health, fire, safety, and motor vehicle parking space that generally apply to single-family residences in the zoning district for Family Homes I or multifamily use districts for Family Homes II. No requirements for business licenses, gross receipt taxes, environmental impact studies, or clearances may be imposed on the homes if those fees, taxes, or clearances are not imposed on all structures in the zoning district housing a like number of persons; and

(4)(A) Procedures by which any resident of a residential zoning district or the governing body of a political subdivision in which a Family Home I or Family Home II is or is to be located may petition the division to deny an application for a license to operate a Family Home I or Family Home II on the grounds that the operation of the home would be in violation of the limits established pursuant to subdivision (a)(1)(A) or subdivision (a)(1)(B) of this section or that the proposed location is an area of high risk to the health and safety of the residents of the family home.

(B) Petitions claiming the high-risk-area basis for denial must set forth and document one (1) or more of the following high-risk rationales:

(i) High crime area;

(ii) Close proximity to stored hazardous materials;

(iii) Dangerous traffic pattern;

(iv) Frequent flooding; or

(v) Insufficient fire protection.

(b) The division shall furnish a copy of proposed rules promulgated hereunder to the Arkansas Municipal League, the Association of Arkansas Counties, and the Capitol Zoning District Commission at least thirty (30) days before the public hearing to be held thereon.

**History.** Acts 1987, No. 611, § 5; 2019, No. 315, §§ 2157-2159.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in the introductory language of (a) and in (a)(3) and (b).

### 20-48-607. Application for license.

(a) All applicants for a license to operate a Family Home I or Family Home II shall apply to the Division of Developmental Disabilities Services for the license and shall file a copy of the application with the governing body of the political subdivision having jurisdiction over the

zoning of the land on which the Family Home I or Family Home II is to be located.

(b) Notice of the application shall be sent by mail addressed to the resident as listed in the city directory or occupant of all buildings located within two hundred feet (200') of the proposed site.

(c)(1) All applicants shall post a sign not less than twelve inches by eighteen inches (12″ x 18″) at the site.

(2) The sign shall contain such statements as required by rules promulgated pursuant to this subchapter.

(d) All applications must include population and occupancy statistics reflecting compliance with the limits established pursuant to § 20-48-606(a)(1)(A) and (B).

(e) The division may not issue a license for a family home until the applicant has submitted proof of filing with the governing body of the political subdivision having jurisdiction over the zoning of the land on which the home is to be located a copy of the application at least thirty (30) days before the granting of the license and any amendment of the application increasing the number of residents to be served at least fifteen (15) days before the granting of a license.

**History.** Acts 1987, No. 611, § 6; 2019, No. 315, § 2160.

**Amendments.** The 2019 amendment substituted "rules" for "regulations" in (c)(2).

### 20-48-611. Restriction by private property agreement void.

(a) Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property that would permit residential use of property but prohibit the use of the property as a Family Home I or Family Home II for individuals with intellectual or other developmental disabilities, to the extent of the prohibition, shall be void as against the public policy of this state and shall be given no legal or equitable force or effect.

(b) Nothing in this subchapter shall be construed directly or analogously to affect the rights of property owners to exclude by express or judicially implied agreements other property uses which are not the subject of this subchapter.

**History.** Acts 1987, No. 611, § 10; 2019, No. 1035, § 34.

**Amendments.** The 2019 amendment, in (a), substituted "individuals with intellectual or other developmental disabilities" for "developmentally disabled persons", and made a stylistic change.

## Subchapter 7 — Relationship Between State and Communities to Provide for Community-Based Services

## 20-48-703. Eligibility.

(a)(1) Eligibility for services and appropriate placement in the least restrictive environment for individuals with intellectual and developmental disabilities under any of the service models included in the state's Medicaid plan with the Centers for Medicare & Medicaid Services or for services covered from state general revenue dollars shall be made by the interdisciplinary team composed in keeping with federal and state laws pertaining to individuals with special needs.

(2) Subdivision (a)(1) of this section does not negate or preclude the rights of individuals with intellectual and developmental disabilities under existing federal and state laws.

(b)(1) Subject to approval by the Centers for Medicare & Medicaid Services, the Department of Human Services will accept an individualized family service plan or an individualized program plan developed in conformity with all applicable state and federal laws as prior authorization for Medicaid-covered therapies provided to persons with intellectual and developmental disabilities.

(2) Prior authorization does not preclude post-payment reviews or other utilization control measures.

(c)(1) For individuals with intellectual and developmental disabilities who, pursuant to the diagnosis, evaluation, and assessments conducted by the interdisciplinary team, in conformity with all applicable federal and state laws, are found to fall within the eligibility guidelines adopted pursuant to this subchapter, and where the individual's primary care physician, independent of the service provider, serves as the gatekeeper and prescribes early intervention day treatment or adult developmental day treatment services, or both, prior approval is not required for up to five (5) hours of daily services.

(2) If the funding model for the early intervention day treatment and adult developmental day treatment services is changed in the state's Medicaid plan with the Centers for Medicare & Medicaid Services, the five (5) hours per day shall remain the minimum number of hours to afford those families who choose to keep their child or adult with an intellectual or other developmental disability in the community, thereby bearing a considerable responsibility for the care and expenses related to the treatment and care.

**History.** Acts 2001, No. 1792, § 3; 2019, No. 1035, § 35.

**Amendments.** The 2019 amendment inserted the subdivision designations in (a), (b), and (c); inserted "intellectual and" throughout the section; added "Subdivision (a)(1) of" in (a)(2); substituted "early intervention day treatment or adult developmental day treatment services, or both" for "day treatment services, referred to as developmental day treatment services under the present developmental day treatment clinic services model" in (c)(1); rewrote (c)(2); and made stylistic changes.

## 20-48-704. Code system of reimbursement.

(a) The conversion to the federally mandated current procedural terminology code system of reimbursement shall take into account the

intent of this law to provide sources of funding that cover the costs of services to individuals who choose community-based options, within the adopted and approved eligibility standard, including the prescribed treatment services and all required compliance mandates from the federal and state governments.

(b) If the early intervention day treatment or adult developmental day treatment services codes, or both, are excluded by the Centers for Medicare & Medicaid Services, the Division of Medical Services shall take all necessary steps to apply to the administration for approval of a service model that will continue to provide an array of community-based service options for children and adults comparable to or greater than those under the present early intervention day treatment and adult developmental day treatment services model.

**History.** Acts 2001, No. 1792, § 4; 2019, No. 1035, § 36.

**Amendments.** The 2019 amendment, in (b), substituted "If the early intervention day treatment or adult developmental day treatment services codes, or both, are excluded" for "In the event that it is evident that the developmental day treatment clinic services codes will be excluded" and "early intervention day treatment and adult developmental day treatment" for "developmental day treatment clinic"; and made a stylistic change.

## 20-48-705. Membership of nonprofit organizations.

A nonprofit organization licensed or certified by the Division of Developmental Disabilities Services to serve adults shall include an individual with intellectual or other developmental disabilities as an ex officio member of the nonprofit organization's board of directors or other governing body.

**History.** Acts 2009, No. 1488, § 1; 2019, No. 1035, § 37.

**Amendments.** The 2019 amendment inserted "intellectual or other".

### Subchapter 8 — Criminal Records Checks for Employees of Providers of Care to Adults With Disabilities

SECTION.



## 20-48-812. Criminal history records checks required — Definitions.

(a) As used in this section:

(1) "Registry records check" means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person's suitability for licensure or certification as a service provider or employment with a service provider to provide care as defined in § 20-38-101; and

(2) "Service provider" means any of the following:

(A) A community and employment supports services waiver provider;

(B) A First Connections provider; or

(C) An early intervention day treatment or adult developmental day treatment provider.

(b) Beginning September 1, 2009, a service provider is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(c)(1) A person offered employment with a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(2)(A) A person who was offered employment by a service provider before September 1, 2009, was subject to a criminal history records check under §§ 20-48-801 — 20-48-811 [repealed] and has continued to be employed by the service provider who initiated the criminal history records check may continue employment with the service provider based on the results of the criminal history records check process conducted under §§ 20-48-801 — 20-48-811 [repealed].

(B) When the person next undergoes a periodic criminal history records check, the person's continued employment with the service provider is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(d)(1) The person who signs an application for licensure or certification as a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal records checks.

(2)(A) The person who signed an application for licensure or certification of a service provider before September 1, 2009, was subject to a criminal history records check under §§ 20-48-801 — 20-48-811 [repealed], and has continued to maintain the licensure or certification of the service provider may continue to maintain the licensure or certification of the service provider based on the results of the criminal history records check process conducted under §§ 20-48-801 — 20-48-811 [repealed].

(B) When the service provider next undergoes a periodic criminal history records check, the service provider's continued licensure or certification is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(e) The Division of Developmental Disabilities Services shall establish by rule requirements for registry records checks for:

(1) An applicant for licensure or certification of a service provider;

(2) An applicant for employment with a service provider; and

(3) An employee of a service provider.

(f) The division shall establish by rule:

(1) Requirements for criminal history and registry records checks of persons who volunteer for a service provider; and

(2) The consequences of a determination that a person who proposes to reside in an alternative living home in which services are provided to

an individual with developmental disabilities is disqualified from the residency based on the criminal history of the person.

**History.** Acts 2009, No. 762, § 8; 2019, No. 1035, § 38.

**Amendments.** The 2019 amendment rewrote (a)(2).

## Subchapter 9 — Intermediate Care Facilities



### 20-48-901. Definitions.

As used in this subchapter:

(1)(A) "Gross receipts" means all compensation paid to intermediate care facilities for individuals with intellectual and developmental disabilities for services provided to residents, including without limitation client participation.

(B) "Gross receipts" does not include charitable contributions;

(2)(A) "Intermediate care facility for individuals with intellectual and developmental disabilities" means a residential institution maintained for the care and training of persons with intellectual and developmental disabilities.

(B) "Intermediate care facility for individuals with intellectual and developmental disabilities" does not include:

(i) Offices of private physicians and surgeons;

(ii) Residential care facilities;

(iii) Assisted living facilities;

(iv) Hospitals;

(v) Institutions operated by the United States Government;

(vi) Life care facilities;

(vii) Nursing facilities; or

(viii) A facility which is conducted by and for those who rely exclusively upon treatment by prayer for healing in accordance with tenets or practices of a recognized religious denomination; and

(3) "Medicaid" means the medical assistance program established by Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed on January 1, 2009, and administered by the Division of Medical Services.

**History.** Acts 2009, No. 433, § 1; 2019, No. 1035, § 39.

**Amendments.** The 2019 amendment inserted "intellectual and" throughout (1) and (2); deleted "including without limitation intellectual disabilities" following "developmental disabilities" at the end of (2)(A); deleted former (2)(B) and redesignated (2)(C) as (2)(B).

**20-48-902. Calculation of provider fee.**

(a)(1) There is levied a provider fee on intermediate care facilities for individuals with intellectual or other developmental disabilities to be calculated in accordance with this section.

(2)(A) The provider fee shall be an amount calculated by the Division of Medical Services to produce an aggregate provider fee payment equal to six percent (6%) of the aggregate gross receipts of all intermediate care facilities for individuals with intellectual or other developmental disabilities.

(B) Aggregate provider fees shall not equal or exceed an amount measured on a state fiscal year basis that may cause a reduction in federal financial participation in Medicaid.

(b)(1)(A) The provider fee of an intermediate facility for individuals with intellectual or other developmental disabilities shall be payable in monthly payments.

(B) Each monthly payment shall be due and payable for the previous month by the thirtieth day of each month.

(2) The division shall seek approval from the Centers for Medicare & Medicaid Services to treat the provider fee of an intermediate care facility for individuals with intellectual or other developmental disabilities as an allowable cost for Medicaid reimbursement purposes.

(c) An intermediate care facility for individuals with intellectual or other developmental disabilities is not guaranteed, expressly or otherwise, that any additional moneys paid to the intermediate care facility for individuals with intellectual or other developmental disabilities will equal or exceed the amount of its provider fee.

(d)(1) The division shall ensure that the rate of assessment of the provider fee established in this section maximizes federal funding to the fullest extent possible.

(2) If the division determines that the rate of assessment of the provider fee established in this section equals or exceeds the maximum rate of assessment that federal law allows without reduction in federal financial participation in Medicaid, the division shall lower the rate of assessment of the provider fee to a rate that maximizes federal funding to the fullest extent possible.

**History.** Acts 2009, No. 433, § 1; 2019, No. 1035, § 40.

**Amendments.** The 2019 amendment inserted "intellectual or other" throughout the section; and made a stylistic change.

**20-48-904. Use of funds.**

(a)(1) The provider fee assessed and collected under this subchapter shall be deposited into a designated account within the Arkansas Medicaid Program Trust Fund.

(2) The designated account shall be separate and distinct from the General Revenue Fund Account of the State Apportionment Fund and shall be supplementary to the Arkansas Medicaid Program Trust Fund.

(3) The designated account moneys in the Arkansas Medicaid Program Trust Fund and the matching federal financial participation under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed on January 1, 2009, shall be used only for:

(A) Continued operation of and rate increases for:

(i) Intermediate care facilities for individuals with intellectual and developmental disabilities;

(ii) Early intervention day treatment and adult developmental day treatment service providers; and

(iii) Services provided to persons with developmental disabilities under a community and employment supports services waiver;

(B) Expansion of the Community and Employment Supports Services Waiver Program to serve more persons with developmental disabilities than is approved under the waiver program;

(C) The Division of Medical Services; and

(D) Public guardianship of adults.

(b)(1) The designated account moneys in the Arkansas Medicaid Program Trust Fund from the provider fee on intermediate care facilities for individuals with intellectual or other developmental disabilities that are unused at the end of a fiscal year shall be carried forward.

(2) The designated account moneys in the Arkansas Medicaid Program Trust Fund from the provider fee on intermediate care facilities for individuals with intellectual or other developmental disabilities may not be used to supplant other local, state, or federal funds.

**History.** Acts 2009, No. 433, § 1; 2019, No. 1035, §§ 41, 42.

**Amendments.** The 2019 amendment rewrote (a)(3); and inserted "intellectual or other" in (b)(1) and (b)(2).

## Subchapter 10 — Community and Employment Supports Services Waiver Program Provider Fee



### 20-48-1001. Definitions.

As used in this subchapter:

(1) "Community and Employment Supports Services Waiver Program" means the home and community-based waiver program authorized by the Centers for Medicare & Medicaid Services under section 1915(c) of the Social Security Act, 42 U.S.C. § 1396 et seq., and administered by the Division of Developmental Disabilities Services;

(2)(A) "Gross receipts" means compensation paid to a provider for services provided through, or identical to those provided under, the Community and Employment Supports Services Waiver Program.

(B) "Gross receipts" does not include charitable contributions; and

(3) "Medicaid" means the medical assistance program established by Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., and administered by the Division of Medical Services.

**History.** Acts 2011, No. 275, § 1; 2019, No. 1035, § 43.

**Amendments.** The 2019 amendment substituted "Community and Employment Supports Services Waiver Program" for "Alternative Community Services Waiver Program" in (1) and (2)(A); and made a stylistic change.

## 20-48-1002. Provider fee.

(a)(1) There is imposed a provider fee on services provided through, or identical to those provided under, the Community and Employment Supports Services Waiver Program to be calculated in accordance with this section.

(2) The provider fee shall be an amount calculated by the Division of Medical Services to produce a provider fee payment equal to six percent (6%) of the gross receipts received by each provider.

(b)(1)(A) The provider fee shall be payable in monthly payments.

(B) Each monthly payment shall be due and payable for the previous month by the thirtieth day of each month.

(2) The division shall seek approval from the Centers for Medicare & Medicaid Services to treat the provider fee as an allowable cost for Medicaid reimbursement purposes.

(c) A provider of services under the Community and Employment Supports Services Waiver Program shall not be guaranteed, expressly or otherwise, that any additional moneys paid to the provider for services under the Community and Employment Supports Services Waiver Program will equal or exceed the amount of its provider fee.

(d)(1) The division shall ensure that the rate of imposition of the provider fee established in this section equals, but does not exceed, the maximum rate of imposition established under federal law and rule for healthcare-related provider fees without reduction in federal financial participation in Medicaid.

(2) If the division determines that the rate of imposition of the provider fee established in this section exceeds the maximum rate of imposition that federal law and rule allow for healthcare-related provider fees without reduction in federal financial participation in Medicaid, the division shall lower the rate of imposition of the provider fee to a rate that is equal to the maximum rate that federal law and rule allow for healthcare-related provider fees without reduction in federal financial participation in Medicaid.

**History.** Acts 2011, No. 275, § 1; 2019, No. 1035, §§ 44, 45.

**Amendments.** The 2019 amendment substituted "Community and Employment Supports Services Waiver Program" for "Alternative Community Services Waiver Program" in (a)(1) and (c).

**20-48-1004. Use of funds.**

(a)(1) The provider fee imposed and collected under this subchapter shall be deposited into a designated account within the Arkansas Medicaid Program Trust Fund.

(2) The designated account shall be separate and distinct from the General Revenue Fund Account of the State Apportionment Fund and shall be supplementary to the Arkansas Medicaid Program Trust Fund.

(3) The designated account moneys in the Arkansas Medicaid Program Trust Fund and the matching federal financial participation under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., shall be used only as follows:

(A) For the amount resulting from the first five and five-tenths percent (5.5%) of the provider fee:

(i) A minimum of fifty percent (50%) shall be used for the support and enhancement of services under the Community and Employment Supports Services Waiver Program to persons with developmental disabilities; and

(ii) An amount not to exceed fifty percent (50%) may be used by the Division of Medical Services; and

(B) The amount resulting from the next five-tenths of one percent (0.5%) of the provider fee shall be used by the Division of Developmental Disabilities Services for the support of the state's human development centers.

(b)(1) The designated account moneys in the Arkansas Medicaid Program Trust Fund from the provider fee imposed and collected under this subchapter that are unused at the end of a fiscal year shall be carried forward.

(2) The designated account moneys in the Arkansas Medicaid Program Trust Fund from the provider fee imposed and collected under this subchapter may not be used to supplant other local, state, or federal funds.

(3) The designated account moneys in the Arkansas Medicaid Program Trust Fund from the provider fee imposed and collected under this subchapter shall be exempt from budgetary cuts, reductions, or eliminations caused by a deficiency of general revenues.

**History.** Acts 2011, No. 275, § 1; 2013, No. 1132, § 36; 2019, No. 1035, § 46.

**Amendments.** The 2019 amendment substituted "Community and Employment Supports Services Waiver Program" for "Alternative Community Services Waiver Program" in (a)(3)(A)(i).

## Subchapter 11 — Managed Expansion for Child Health Management Services

## 20-48-1101. Legislative intent.

The intent of this subchapter is to avoid unnecessary expansion in Medicaid costs and services related to early intervention day treatment services for children or any successor program providing early intervention day treatment to children.

**History.** Acts 2013, No. 1017, § 1; 2019, No. 1035, § 47.

**Amendments.** The 2019 amendment substituted "early intervention day treatment services" for "child health management services and developmental day treatment clinic services".

## 20-48-1102. Definitions.

As used in this subchapter:

(1) "Accredited entity" means a corporate entity that:

(A) Has successfully completed an ongoing accreditation process that is offered by a national accrediting organization and is related to the delivery of early intervention day treatment services; and

(B) Satisfies all certification and licensure criteria established by the Department of Human Services for the delivery of early intervention day treatment services;

(2)(A) "Early intervention day treatment" means services provided by a pediatric day treatment program run by early childhood specialists, overseen by a physician, and serving children with developmental disabilities, developmental delays, or a medical condition that puts them at risk for developmental delay.

(B) Early intervention day treatment includes without limitation diagnostic, screening, evaluative, preventive, therapeutic, palliative, and rehabilitative and habilitative services, including speech, occupational, and physical therapies and any medical or remedial services recommended by a physician for the maximum reduction of physical or mental disability and restoration of the child to the best possible functional level.

(C) Early intervention day treatment or a successor program constitutes the state's early intervention day treatment program;

(3)(A) "Early intervention day treatment services operated by an academic medical center" means an academic medical center program specializing in developmental pediatrics that is administratively staffed and operated by an academic medical center and under the direction of a board-certified or board-eligible developmental pediatrician.

(B) An academic medical center consists of a medical school and its primary teaching hospitals and clinical programs.

(C) Early intervention day treatment services operated by an academic medical center may be provided at different sites operated by the academic medical center if the early intervention day treatment services program falls under one (1) administrative structure within the academic medical center;

(4) "Existing operations" means services provided by an early intervention day treatment services program that has submitted a completed application to the Division of Medical Services to serve as a Medicaid provider no later than July 1, 2013;

(5) "Medicaid" means the medical assistance program authorized under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., and established under § 20-77-101 et seq., that provides for payments for medical goods or services on behalf of indigent families with dependent children and of individuals who are aged, blind, or disabled and whose income and resources are insufficient to meet the cost of necessary medical services;

(6) "National accrediting organization" includes without limitation:

(A) The CARF International; or

(B) Any other similar national accrediting organization recognized by the Division of Developmental Disabilities Services; and

(7) "Successor program" means a program:

(A) That provides early intervention day treatment to children;

(B) That is created as a replacement for, combination of, or derived in whole or in part from the early intervention day treatment services program for children; and

(C) In which the for-profit and nonprofit providers from early intervention day treatment services programs are eligible to participate.

**History.** Acts 2013, No. 1017, § 1; 2019, No. 1035, § 47.

**Amendments.** The 2019 amendment rewrote the section.

## 20-48-1103. Prerequisites for certification and licensure.

(a)(1) Certification and licensure are required for operation as an early intervention day treatment program.

(2) Certification shall be granted on a countywide basis.

(b) Before obtaining certification, an early intervention day treatment services program is required to apply to and obtain the approval of the Division of Developmental Disabilities Services to implement new early intervention day treatment services under the criteria established under this subchapter.

(c) A certified early intervention day treatment services program with existing operations on July 1, 2013, shall not be required to obtain the approval of the division to continue existing operations.

**History.** Acts 2013, No. 1017, § 1; 2019, No. 1035, § 47.

**Amendments.** The 2019 amendment rewrote the section.

# CHAPTER 49

# STERILIZATION OF MENTALLY INCOMPETENT PERSONS

SUBCHAPTER.



## Subchapter 1 — General Provisions

SECTION.



### 20-49-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Court" shall mean circuit court;

(2) "Guardian" shall mean one appointed to have the care and custody of the person of an incompetent person; and

(3) "Incompetent person" shall mean a person as to whom it is proved:

(A) He or she is incapable of caring for himself or herself by reason of intellectual and developmental disability, mental illness, imbecility, idiocy, or other mental incapacity;

(B) He or she manifests sexual inclinations which make it probable that he or she will procreate children unless he or she is rendered incapable of procreation; and

(C) There is no probability that his or her condition will improve so that he or she will become capable of caring for himself or herself.

**History.** Acts 1971, No. 433, ch. 5, § 1; A.S.A. 1947, § 59-501; Acts 2019, No. 1035, § 48.

**Amendments.** The 2019 amendment inserted "and developmental" in (3)(A).